

Vol II

23

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 25

PETER GEDDES, JOSEPH B. WALKER, JOSEPH B. BARR  
ET AL, APPELLANTS,

ANACONDA COPPER MINING COMPANY ET AL

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

petent, irrelevant and immaterial, which said objection was overruled by the court, and exception noted by said defendants.

(Whereupon the proceedings of the first meeting of the stockholders and the first meeting of the directors of the company were offered and received in evidence and marked Complainants' Exhibit "D" and are in the words and figures following, to-wit:

**Exhibit D.**

**INCORPORATORS' MINUTES.**

Minutes of the first meeting of the Incorporator and Subscribers to the Capital Stock of

**AMALGAMATED COPPER COMPANY**

held at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street Jersey City, N. J., on the 27th day of April, 1899, at 4 o'clock in the afternoon, for the purposes of perfecting the organization of the Company, electing directors and transacting such other matters as may properly come before the meeting..

There were present Messrs. Edwin T. Rice, Jr., Charles D. Burrage and Charles N. King, being all the incorporators and subscribers to the capital stock of the Company.

Mr. Edwin T. Rice, Jr., called the meeting to order, and upon motion was made temporary Chairman, and Mr. C. D. Burrage appointed temporary Secretary of the meeting.

A waiver of notice, signed by all the persons named in the Certificate of Incorporation, as subscribers to the capital stock, was read, and the



same was ordered to be entered on the minutes, and is as follows:

**WAIVER OF NOTICE OF THE FIRST MEETING  
OF THE INCORPORATORS AND SUBSCRIB-  
ERS AMALGAMATED COPPER COMPANY.  
COMPANY.**

We, the undersigned, being the Incorporators and all the parties named in the Certificate of Incorporation of

**AMALGAMATED COPPER COMPANY**  
a corporation of New Jersey, do hereby waive notice of the time, place, and purpose of the first meeting of the said Company, and do fix the 27th day of April, 1899, at 4 o'clock in the afternoon, as the time, and the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J., as the place of the first meeting of the said Company, and we do hereby waive all the requirements of the Statute of the State of New Jersey as to notice and publication thereof.

Dated, Jersey City, N. J., April 27th, 1899.

(Signed)

EDWIN T. RICE, JR.  
CHARLES D. BURRAGE,  
CHARLES N. KING.

A certified copy of the Certificate of Incorporation, certified under the seal of the Secretary of State, was presented to the meeting, and was ordered to be entered upon the minutes, and the same is as follows:

**FIRST: The name of the corporation is the  
AMALGAMATED COPPER COMPANY**

SECOND: The location of its principal office in the State of New Jersey is No. 243 Washington Street, in the City of Jersey City, County of Hudson. Said office is to be registered with New Jersey Corporations' Agency. The name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is the New Jersey Corporations' Agency.

THIRD: The objects for which, and for any of which, the corporation is formed, are to do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world, viz:

(1) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals and minerals, and in the products and bi-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims and in the above specified products, and to conduct all business appurtenant thereto.

(2) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, converting, concentrating and smelting, treating, buying, selling, exchanging, manufacturing, and dealing in the above specified lands,

properties, rights, products, and all materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants, or consignees, any other business which in the judgment of the Company, may be conveniently conducted in conjunction with any of the matters aforesaid.

(3) To manufacture, deal in and turn to account, a contract for the sale, supplies, letting on hire, erection, repairing and maintenance of any plant, machinery, implement and thing incidental to or connected with any of the business aforesaid.

(4) To apply for, purchase or otherwise acquire, and to hold, own use, operate, and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and with a view to the working development of the same to carry on any business whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(5) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, rights or privileges suitable or convenient for any purpose of its business, and to erect and construct, make, improve or aid, or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings,

roads, docks, piers, wharves, machinery and works of all kinds, in so far as the same may be appurtenant to or useful for the conduct of the business of the Company as above specified.

(6) To cause or allow the legal title, estate and interest in any property acquired, established or carried or by the Company to remain or be vested or registered in the name of or carried on by any other Company or Companies foreign or domestic, formed or to be formed, and either upon trust for, or as agents or nominees of this Company, or upon any other terms or conditions which the Board of Directors may consider for the benefit of this Company, and to manage the affairs or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks or securities thereof and to receive and distribute as profits the dividends and interest on such shares, stocks, or securities.

(7) To acquire and carry on all or any part of the business or property of any company engaged in a business similar to that authorized to be conducted by the Company, and to undertake in conjunction therewith any liabilities of any persons, firm, association or company possessed of property suitable for any of the purposes of this Company, or for carrying on any business which this Company is authorized to conduct, and as the consideration of the same to pay cash or to

issue shares, stocks, or obligations of this Company.

(8) To purchase, subscribe for, or otherwise acquire, and to hold, the shares, stocks, or obligations of any company organized under the laws of this State, or of any other State, or any territory or colony of the United State, or of any foreign country, and to sell or exchange the same, or upon a distribution of the assets or division of profits to distribute any such shares, stocks or obligations or the proceeds thereof, amongst the stockholders of this Company.

(9) To borrow or raise money for any purpose of the Company, to secure the same and the interests or for any other purpose to mortgage or charge the undertaking, or all or any part of the property present or after-acquired, subject to the limitations herein prescribed.

(10) To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation, whenever proper or necessary for the business of this Company, upon such terms and conditions and in such manner as may be prescribed by the By-Laws.

(11) To sell, let, develop, dispose of or otherwise deal with the franchise or undertaking of all or any part of the property of the Company upon any terms, with power to accept as the consideration any shares, stocks or other obligations of any other company.

(12) To carry out all or any part of the fore-

going objects as principals or agents, or in conjunction with any other person, firm, association or company, and in any part of the world.

(13) To do all such things as are incidental or conducive to the attainment of the above objects.

IN FURTHERANCE OF, and not in limitation of, the general powers conferred by the laws of the State of New Jersey, it is hereby expressly provided that the Company shall have also the following powers.

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign, and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Company, bonds or otherwise.

To enter into, make, perform and carry out contracts of every kind, with any person, firm, association, corporation, without limit as to amount, to draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise ac-

quire, to hold, own, to mortgage, sell, convey or otherwise dispose of, without limit as to amount, real and personal property of every class and description in any State or territory of the United States and in any foreign country or place.

IN GENERAL, to carry on any other business in connection therewith, whether manufacturing, mining or otherwise, and with all the powers conferred by the laws of New Jersey upon corporations under the Act hereinafter referred to.

It is the intention that the objects and powers specified and clausued contained in this Third Article, shall, except where otherwise expressed in said article, be nowise limited or restricted by reference to, or inference from the terms of any other clause, of this or any other article or paragraph in this charter, but that the objects specified in each of the clauses of this article shall be regarded as independent objects.

The duration of the corporation shall be unlimited.

FOURTH: The total authorized stock of this corporation is seventy-five million (\$75,000,000) dollars, divided into seven hundred and fifty thousand (750,000) shares of one hundred dollars (\$100) each.

FIFTH: The names of the incorporators (the post office addresses of each is number 243 Washington Street, Jersey City, New Jersey) and the number of shares subscribed for by each, the aggregate of which (\$1,000.00) is the amount of cap-



ital with which the Company will commence business, are as follows:

Name	Number of Shares.
Charles N. King	One
Charles D. Burrage	Eight
Edwin T. Rice, Jr.	One

SIXTH The corporation may use and apply its surplus earnings or accumulated profits otherwise by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time and to such extent and in such manner, and upon such terms as its Board of Directors shall determine; and neither the property nor the capital stock so purchased and acquired nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payments of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the stockholders.

The corporation, in its By-Laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number.

The number of directors at any time may be increased by vote of the Board of Directors, and in case of any such increase the Board of Directors shall have power to elect such additional directors, to hold office until the next meeting of stockholders, or until their successors shall be elected.

The Board of Directors shall have power with-

out the assent or vote of the stockholders, to make, alter, amend and rescind the By-Laws of the corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed, mortgages and liens upon the real and personal property of the corporation, and from time to time, to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to a vote of at least two-thirds of the Board of Directors.

The Board of Directors, by resolution passed by a majority of the whole Board, may designate three or more directors to constitute an Executive Committee, which Committee to the extent provided in said resolution or in the By-Laws of the corporation, shall have and may exercise the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers, which may require it.

The Board of Directors from time to time shall determine whether and to what extent, and at what time and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the Board of Directors or by a resolution of the Stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State at such places as may be from time to time designated by them.

It is the intention that the objects above specified in Article Third, except where otherwise expressed in said Article, shall be nowise limited, or restricted, by reference to or inference from the terms of any other article, clause or paragraph in this certificate.

The undersigned for the purpose of forming a corporation in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations" (Revisions of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth and have accordingly hereunto set our hands and seals.

Dated, Jersey City; N. J. April 27th, 1899.

In presence of

EDWIN T. RICE, JR.	(L. S.)
CHARLES D. BURRAGE	(L. S.)
CHARLES N. KING	(L. S.)

State of New Jersey,  
County of Hudson, ss.

BE IT REMEMBERED, that on the 27th day of April, A. D., eighteen hundred and ninety-nine, before the undersigned, personally appeared Ed-

win T. Rice, Jr., Charles D. Burrage and Charles N. King, whom I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them and each of them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

10 cent

I. R. S.

Cancelled

AUGUSTUS C. KELLOGG,

Master in Chancery of New Jersey.

Received in the Hudson County, N. J. Clerk's office, April 27th, 1899, and recorded in Clerk's Record No. on page

(Signed) JOHN C. FISHER, Clerk.

"Filed April 27th, 1899,

GEO. WURTS,

Secretary of State."

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of Amalgamated Copper Company, and the same is taken from and compared with the original filed in my office on the 27th day of April, A. D. 1899, and now remaining on file therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official Seal, at Trenton, this Twenty-Seventh day of April, A. D. 1899.

[Seal]

(Signed) GEORGE WURTS,

Secretary of State.

The Chairman presented a form of By-Laws for the government and regulation of the affairs of the Company, which was read article by article and unanimously adopted, and the same was ordered to be inserted at length upon the minutes, and is as follows:

**BY-LAWS**

of the

**AMALGAMATED COPPER COMPANY.**

Adopted by the Stockholders, April 27th, 1899.

**TITLE**

**LOCATION.**

1. The title of the corporation is the **AMALGAMATED COPPER COMPANY.**

2. The principal office in New Jersey shall be and be registered with the New Jersey Corporations Agency, 243 Washington Street, Jersey City, N. J.

The Company may also have an office in the City of New York, State of New York, and also offices at such other places as the Board of Directors may from time to time appoint or the business of the Company may require.

**DIRECTORS.**

3. The property and the business of the Corporation shall be managed by a Board of Directors, eight in number; they shall be chosen from the stockholders and shall hold office for one year and until others are elected and qualified in their stead. The number of Directors may be increased or decreased by amendment of the provisions of the By-Laws.

4. If the office of any Director, or of the Presi-

dent, Vice President, Secretary or Treasurer, one or more, becomes vacant, by reason of death, resignation, disqualification or otherwise, the remaining Directors, although less than a quorum, by a majority vote, may elect a successor or successors, who shall hold office for the unexpired term.

5. Any Director or other elected officer may resign his office at any time. The acceptance of a resignation shall not be required to make it valid.

### STOCKHOLDERS.

#### GENERAL PROVISIONS.

6. All meetings of stockholders must be held within the State of New Jersey, and at the principal office of the Company in Jersey City.

At all meetings of the stockholders, shareholders may vote either in person or by proxy in writing.

7. A majority of the stock issued and outstanding shall be requisite to constitute a quorum.

8. The annual meeting of the stockholders, after the year 1899, shall be held on the first Monday of June in each year, at Jersey City, N. J., at 10 o'clock A. M. When they shall elect by a plurality vote, the aforesaid Directors, to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

Notice of the annual meeting shall be mailed to

each stockholder at his address as the same appears upon the records of the Company at least seven days prior to the meeting.

9. Special meetings of the stockholders shall, at the request of any two Directors, be called by the Secretary, by mailing a notice stating the object of and business to be transacted at such special meeting, at least seven days prior to the date of meeting, to each stockholder on record at his post-office address as the same appears on the records of the Company.

#### OFFICERS.

10. At the first meeting after the election of Directors, when there shall be a quorum, the Board of Directors shall elect, by ballot, a President and Vice President from their own number, who shall hold office for one year and until their successors are elected and qualify.

The Board shall also annually choose a Secretary and a Treasurer who need not be members of the Board, or one person to act as both Secretary and Treasurer, who shall at the pleasure of the Board hold office for one year, unless sooner removed by the Board, which the Board shall have power at any time to do, with or without cause.

#### MEETINGS OF DIRECTORS.

11. A majority of the Directors in office shall be necessary to constitute a quorum for the transaction of business, except to adjourn.

12. Special meetings of the Board may be called by the President or Vice President on one day's notice to each Director.



13. The directors may hold their meetings and have an office and keep the books of the Company (except the stock and transfer books) outside of the State of New Jersey, at the place or places as they may from time to time fix upon.

#### POWER OF DIRECTORS.

14. The Board of Directors shall have the management of the business of the Company, and in addition to the powers and authorities by these By-Laws expressly conferred upon them, may exercise all such powers and do all such things, as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the Statute, of the Charter and of these By-Laws.

15. Without prejudice to the general powers conferred by the last preceding clause and the other powers conferred by these By-Laws, the Board of Directors shall have the following powers:—

To purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorized to acquire, at such prices and on such terms and conditions, and for such consideration as they think fit.

At their discretion, to pay for any property or rights acquired by the Company, either wholly or partially in money or in stock, bonds, debentures or other securities of the Company.

To appoint, and at their discretion remove or suspend such managers, subordinates, assistants or otherwise, and clerks, agents, and servants, permanently or temporarily, as they may from time

to time think fit, and to determine their duties and fix, and from time to time, change their salaries or emoluments.

To confer by resolution, upon any officer of the Company, the right to choose, remove or suspend such subordinates officers, agents or factors.

To appoint any person or persons to accept and hold in trust for the Company any property belonging to the Company, or in which it is interested, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

To determine who shall be authorized to sign on the Company's behalf, bills, notes, receipts, acceptance, endorsements, checks, releases, contracts and documents, and stock certificates.

#### STANDING COMMITTEE.

16. There may be an Executive Committee of Three Directors appointed by the Board, who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. The President shall also ex-officio be a member of the Executive Committee.

Power is hereby given to the Executive Committee to act by the written consent of a quorum thereof, although not formerly convened.

#### PRESIDENT.

17. The President shall be of the chief executive officer and head of the Company, and in the recess of the Board of Directors and of the Executive Committee shall have the general control and

management of its business and affairs, subject, however, to the right of the Directors to delegate any specific power, except such as may be by Statute exclusively conferred on the President, to any other officer or officers of the Company.

#### VICE PRESIDENT.

18. The Vice President shall be vested with all the powers, and required to perform all, the duties of the President in his absence.

#### THE SECRETARY.

19. The Secretary shall be ex-officio Clerk of the Board of Directors and of the standing committee; he shall attend all sessions of the Board, and act as clerk thereof, and shall record all votes and the minutes of all proceedings in the book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of stockholders of the Company and of the Board of Directors.

He shall be sworn to the faithful discharge of his duty and shall perform such duties as may be required by the Board of Directors or the President and shall at all times be subject to the orders of the Board of Directors.

#### THE TREASURER.

20. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and

to the credit of the Company, in such depositaries as may be designated by the Board of Directors.

He shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors at the regular meetings of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Company.

#### DUTIES OF OFFICERS MAY BE DELEGATED.

21. In case of the absence of an officer of the Company or, for any other reason that may be sufficient to the Board, the Board of Directors may delegate his powers and duties to any other officer, or to any Director, for the time being.

#### FISCAL YEAR.

22. The fiscal year of the Company shall begin the first day of May in each year.

#### DIVIDENDS.

23. Before payment of any dividends or making any distribution of profits, there shall be set aside out of the net profits of the Company such sum or sums as the Directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for any such other purpose as the Directors shall think conducive to the interests of the Company.

#### WAIVER OF NOTICE.

26. Any stockholder, officer or Director may

at any time waive any notice required to be given under these By-Laws.

27. Wherever under the provisions of these By-Laws notice is required to be given to any Director, officer or stockholder, it shall not be construed to mean personal notice, but such notice shall be given in writing by depositing the same in the Post Office or letter box, in a post-paid, sealed wrapper, addressed to such Director, officer or stockholder, at his or her address (other than the principal office of the Company in New Jersey) if and as the same appears on the books of the Company, and the time of the giving of such notice shall be deemed to be the time when the same shall be thus mailed.

#### ALTERATIONS OF BY-LAWS.

28. The Directors, may at any regular or at any special meeting alter or amend these By-Laws.

The Board of Directors may alter or amend these By-Laws at any time, provided five days' notice in writing shall have been sent to each of the Directors of the proposed amendment.

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Upon motion, duly seconded and carried, the election of Directors by ballot was then proceeded with.

Mr. Charles N. Conklin was appointed Inspector of Election.

The Chairman announced that nominations for Directors were now in order.

The following named persons were nominated for Directors of the Company, Messrs. Edwin T.

Rice, Jr., Charles D. Burrage, Charles N. King, Bancroft G. David, Richard D. Willard, Edward G. Storey and William B. Brister, it appearing that Mr. Charles D. Burrage, one of the incorporators, had transferred one share of stock to each of the following named persons: Bancroft G. Davis, Horace A. Davis, Richard D. Willard, Edward G. Storey and Wm. B. Brister.

A separate ballot having been taken, the Inspector announced that there were ten shares voted, each for the above named persons, being a total of all the shares subscribed for in the Certificate of Incorporation.

The Chairman then declared:—

Edwin T. Rice, Jr.,	Charles D. Burrage,
Horace A. Davis,	Richard D. Willard,
Charles N. King,	Bancroft C. Davis,
Edward G. Storey and	William B. Brister.

elected Directors of the Company, to hold office for the ensuing year or until their successors are chosen.

The Secretary stated that Messrs. Edwin T. Rice, Jr., Charles D. Burrage and Charles N. King had waived all notice of payment of assessment on the capital stock and had handed in their subscriptions amounting to one Thousand Dollars (\$1,000) in currency, which amount is the amount with which this Company commenced business.

Upon motion duly made and seconded, and by unanimous vote, it was

VOTED: That the Board of Directors of this Company be authorized to purchase of William

S. Bogart, for the sum of seventy-five million dollars (\$75,000,000.) Six hundred and twenty thousand shares of the Anaconda Copper Mining Company, One Hundred and fifteen thousand seven hundred and nineteen shares of the Parrot Silver and Copper Company, Eighty-three thousand, seven hundred and two shares of the Colorado Smelting and Mining Company, all the Capital stock of the Washoe Copper Company, all of the shares of the Diamond Coal & Coke Company, all the property known as the Carbon Coal Company, all the shares of the Big Blackfoot Milling Company, all the shares of the Capital Lumber Company, all the property known as the St. Regis Lumber Company, all the shares and property of the D. J. Hennessy Mercantile Company, all the shares of the Copper City Commercial Company, all the shares of the Montana Meat Company.

And it was further unanimously

VOTED: That to enable the Board of Directors to carry said vote into effect, said Board of Directors is hereby authorized to increase the capital stock of said Company from one thousand dollars (\$1,000), the amount with which it began business, to Seventy-five Million Dollars (\$75,000,000), or any part thereof, whenever in the judgment of the said Board it is necessary or advisable; and that the proper officers of this Company be authorized to execute and file such certificate to that effect as may be necessary with the Secretary of State.

The meeting adjourned subject to the call of the



President.

A true record. Attest:

C. D. B.,

Secretary.

### MINUTES OF DIRECTORS' MEETING.

Minutes of the proceedings of the first meeting of the Board of Directors of

#### AMALGAMATED COPPER COMPANY.

held at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J. on the twenty-seventh day of April, 1899, at four o'clock in the afternoon.

There were present Messrs. Edwin T. Rice, Jr., Charles D. Burrage, Charles N. King, Bancroft G. Davis, Horace A. Davis, Richard D. Willard, Edward C. Story and William B. Brister, being all the Board of Directors elected by the stockholders.

Mr. B. G. Davis called the meeting to order, and upon motion was made temporary Chairman and Mr. Burrage temporary secretary of the meeting.

A waiver of notice was presented to the meeting by the Secretary signed by all the Board of Directors elected by the stockholders, and upon motion was ordered to be filed and a copy thereof entered upon the records, and is as follows:

#### WAIVER OF NOTICE OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF

#### AMALGAMATED COPPER COMPANY

We, the undersigned, being the Board of Directors, elected by the stockholders of the above named corporation, organized under the laws of

the State of New Jersey, do hereby waive notice of the time and place of the first meeting of the said Board of Directors and of the business to be transacted at said meeting.

We designate the 27th day of April, 1899, at four o'clock in the afternoon, as the time, and the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, N. J. as the place of the first meeting of the said Board of Directors. The purpose of said meeting being the election of officers; the authorization of the issuing of stock of the said company, the authorization of the purchase of property, if necessary for the business of said Company, and the transaction of such other business as may be necessary or advisable to facilitate and complete the organization of said Company, for the purpose of carrying on its contemplated business.

And we do hereby waive all the requirements of the laws of the State of New Jersey, both as to notice and publication thereof, of the time, place and object of the meeting.

Dated, Jersey City, N. J.

April 27th, 1899.

(Signed) CHARLES D. BURRAGE,  
CHARLES N. KING  
WM. B. BRISTER  
BANCROFT C. DAVIS  
RICHARD D. WILLARD  
EDWIN T. RICE, JR.  
EDWARD G. STOREY  
HORACE A. DAVIS.

On motion it was resolved that the Board proceed to the election of officers, and Mr. Harold J. Hockin was appointed Teller of Election.

Mr. B. G. Davis was nominated for the office of President; Mr. H. A. Davis for Vice President; Mr. C. D. Burrage for Secretary; Mr. G. D. Burrage for Treasurer.

There being no other nominations for said offices, a separate ballot was taken on each of the foregoing nominations, and the following persons were stated by the Teller to have been elected to the following respective offices, to-wit:

President	B. G. Davis
Vice President	H. A. Davis
Secretary	C. D. Burrage
Treasurer	C. D. Burrage

The above named persons were thereupon declared by the Chairman to be the respective officers of the Company for the ensuing year, or until their successors are chosen.

The oath required by law was duly administered to the Secretary, who entered upon his duties as Secretary of the meeting.

The oath is as follows:

State of New Jersey  
County of Hudson, ss.

I, Charles D. Burrage, do solemnly swear that I will faithfully discharge the duties of the office of Secretary of

AMALGAMATED COPPER COMPANY  
to the best of my skill and ability, so help me God.

Subscribed and sworn to before me, this 27th day of April, 1899.

(Signed) CHARLES D. BURRAGE.

(Signed) AUGUSTUS G. KELLOGG,

Master in Chancery of New Jersey.

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The Treasurer presented his bonds, which on motion was approved and ordered to be placed in the hands of the President of the Company, and a copy thereof entered upon the minutes of the Company and is as follows:—

KNOW ALL MEN BY THESE PRESENTS, that we, Charles D. Burrage, of Needham, Massachusetts, as principal, and Albert C. Burrage of Boston, Massachusetts, as surety, are held and firmly bound unto the above named corporation, its successors and assigns, in the sum of One Thousand Dollars (\$1,000.) lawful money of the United States, to be paid to such corporation, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twenty-seventh day of April, 1899.

The condition of the above obligation is that,

WHEREAS the said Charles D. Burrage has been duly elected and is about to enter upon the duties of his office as Treasurer of the above named Company,

NOW, THEREFORE, if he shall in all respects

fully and faithfully discharge his duties as such Treasurer, so long as he shall hold the said office or continue therein during the term for which he is now or may hereafter be elected, appointed or hold over, and also, if, in case of his death, resignation or renewal from office from any cause, all the books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation, shall be forthwith restored to the corporation, then this obligation is to be void, otherwise to be in full force and virtue.

(Signed) CHARLES D. BURRAGE (L. S.)

ALBERT C. BURRAGE (L. S.)

Signed, Sealed and Delivered  
in the presence of

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Upon motion it was ordered that the Company procure a corporate seal to be as follows:—

"AMALGAMATED COPPER COMPANY

Incorporated

1899

New Jersey."

It was unanimously

VOTED: That WHEREAS, the following property is necessary for the business of the Company and is of the fair value of Seventy-five Million Dollars (\$75,000,000) in the judgment of the Directors, and the purchase thereof has been authorized by the stockholders, therefore this Company do purchase of William S. Bogert for the sum of Seventy-five Million Dollars (\$75,000,000) as soon as said sale can be arranged and per-

fect, the following property, viz: Six Hundred and twenty thousand shares of the Anaconda Copper Mining Company, One hundred and fifteen thousand seven hundred and nineteen shares of the Parrot Silver & Copper Company, Eighty-three thousand, seven hundred and two shares of the Colorado Smelting and Mining Company, all the Capital Stock of the Washoe Copper Company, all the shares of the Diamond Coal & Coke Company, all the property known as the Carbon Coal Company, all the shares of the Big Black Foot Milling Company, all the shares of the Capital Lumber Company, all the property known as the St. Regis Lumber Company, all the shares and property of the D. J. Hennessy Mercantile Company, all the shares of the Copper City Commercial Company, and all the shares of the Montana Meat Company, and that the Treasurer be authorized to pay for the same out of the funds of the Company.

It was unanimously

VOTED: That in order to carry the foregoing vote into effect the Capital stock of this Company be increased from one thousand dollars (\$1,000) to Seventy-Five Million Dollars (\$75,000,000.).

Upon motion the secretary was authorized to procure the necessary books and stationery for the Company, and to have these minutes and the minutes of the stockholders' meetings entered in the minute book.

Upon motion duly made and seconded the following resolution was adopted:—

"ORDERED, (1) That in compliance with the laws of the State of New Jersey, this corporation have and continuously maintain a principal office and place of business within the State of New Jersey, and have an agent at all times in charge thereof, and upon which agent process against this corporation may be served, and therein keep the stock and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. That the books in which the transfers of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at said principal office.

That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this State.

And be it further

ORDERED, until this resolution be duly rescinded,

(2) That such office and place of business be in and at the office of the New Jersey Corporations' Agency, Nos. 243 and 245 Washington Street, Jersey City, New Jersey, and that this Company be registered with the said Company.

(3) That the New Jersey Corporations' Agency of New Jersey, being by its charter expressly authorized to act in New Jersey as the agent of corporations, domestic and foreign, to the same extent as a natural person, a resident of the State of New Jersey, be and hereby is ap-



pointed the agent of this corporation for all of the aforesaid purposes and the agent of this Company upon whom process against this corporation may be served within the State of New Jersey, and also the transfer agent of the stock of this Company."

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Mr. William B. Brister presented his resignation as a director of the Company.

VOTED: That the resignation of Mr. Brister be Accepted.

VOTED: To proceed to the election of a director to fill the vacancy. A ballot was taken, seven votes being cast, all of which were for F. P. Olcott, who was declared duly elected director.

Mr. Charles N. King presented his resignation as a director of the Company.

VOTED: That the resignation of Mr. King be accepted.

VOTED: To proceed with the election of a director to fill the vacancy.

A ballot was taken six votes being cast, all of which were for Albert C. Burrage, who was declared duly elected director.

Mr. Edwin T. Rice, Jr., presented his resignation as a director of the Company.

VOTED: To proceed to choose by ballot a director to fill the vacancy.

A ballot was taken, five votes being cast, all of which were for Marcus Daly, who was declared duly elected a director of the Company.

VOTED: That the meeting adjourn to 26

Broadway, New York City, at 4:30 P. M. the same day.

A true record.

Attest:

Secretary.

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Pursuant to adjournment, a meeting of the Board of Directors of the Amalgamated Copper Company, was duly held at 26 Broadway, New York City, at 4:30 P. M., April 27, 1899.

PRESENT: Albert C. Burrage, F. P. Olcott, B. G. Davis, H. A. Davis, R. D. Willard, E. G. Storey, C. D. Burrage, a quorum.

Mr. C. D. Burrage presented his resignation as director of the Company.

Upon motion the resignation of Mr. Burrage was accepted.

VOTED: To proceed to the election of a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for H. H. Rogers, who was declared duly elected director of the Company.

Mr. H. A. Davis presented his resignation as Vice President of the Company.

VOTED: That the resignation of Mr. Davis as Vice President be accepted.

VOTED: That the Meeting proceed to choose a Vice President by ballot to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for Henry H. Rogers, who was declared duly elected Vice President of the Company.

Mr. H. A. Davis presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Davis be accepted.

VOTED: To proceed to choose a director to fill the vacancy.

A ballot was taken and six votes were cast, all of which were for James Stillman, who was declared duly elected a director of the Company. Mr. Stillman was present and accepted the position.

Mr. R. D. Willard presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Willard be accepted.

VOTED: That the meeting proceed to elect a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for H. P. Flower, who was declared duly elected a director of the Company. Mr. Flower was present and accepted the position.

Mr. E. C. Story presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Story as a director of the Company be accepted.

VOTED: To proceed to the election of a director to fill the vacancy.

A ballot was taken, six votes being cast, all of which were for Robert Bacon, who was declared duly elected a Director of the Company.

Mr. Bancroft G. Davis tendered his resignation

as President of the Company. Upon motion it was

VOTED: That the meeting proceed to choose a President by ballot to fill the vacancy.

A ballot was taken, five votes were cast, all being for Marcus Daly, who was declared duly elected President of the Company.

Mr. Bancroft G. Davis then presented his resignation as director of the Company.

VOTED: That the resignation of Mr. Davis be accepted.

VOTED: That the meeting proceed to choose a director to fill the vacancy.

A ballot was taken and five votes were cast, all for William Rockefeller, who was declared duly elected a director of the Company.

Mr. C. D. Burrage presented his resignation as Secretary and Treasurer of the Company.

VOTED: That the resignation be accepted.

VOTED: That the meeting proceed to choose by ballot a Secretary and Treasurer to fill the vacancy.

A ballot was taken and six votes were cast, all for Wm. G. Rockefeller, who was declared duly elected Secretary and Treasurer of the Company.

VOTED: That the meeting proceed to ballot for an executive Committee of three.

A ballot was taken, six votes being cast, all of which were for Henry H. Rogers, William Rockefeller and Albert C. Burrage, who were thereupon declared duly elected.

The Treasurer reported that the stock had been

duly transferred to each of the new directors and officers.

VOTED: That the national City Bank be authorized to receive subscriptions until twelve o'clock on Thursday, May 4, 1899, for seven hundred and forty-nine thousand nine hundred and ninety shares (749,990) of the capital stock of this Company, at the par value of one hundred dollars (\$100) per share.

VOTED: That a committee consisting of William Rockefeller and James Stillman be a committee of this Board to make the allotment.

Upon motion, the meeting adjourned, subject to the call of the President.

A true record.

Attest:

(Signed) CHARLES D. BURRAGE,

Secretary.

A meeting of the Board of Directors of the Amalgamated Copper Company, was held at the office of Mr. Wm. Rockefeller, 26 Broadway, New York, at 3 o'clock P. M. Monday, May 22nd, 1899, a quorum being present.

A notary public's certificate of the oath of the Secretary was presented and ordered placed on file.

The oath was as follows:

"State of New York

County of New York

Borough of Manhattan, ss.

I, Wm. G. Rockefeller, do solemnly swear that I will faithfully discharge the duties of the office

of Secretary of the Amalgamated Copper Company, to the best of my skill and ability, so help me God.

(sg) WM. G. ROCKEFELLER.

Subscribed and sworn to before me this 27th day of April, 1899

(sg) MARTIN JUDGE,  
Notary Public, Kings Co.

Certificate filed in New York Co."

The Treasurer presented his bond, which on motion was approved and ordered to be placed on file, and a copy thereof entered upon the minutes of the Company and it is as follows:

**KNOW ALL MEN BY THESE PRESENTS.**

**THAT WE, F. P. ADDICKS, of New York City, New York, are held and firmly bound unto AMALGAMATED COPPER COMPANY, in the sum of Five Thousand Dollars (\$5,000) lawful money of the United States of America, to be paid to the said AMALGAMATED COPPER COMPANY, its successors and assigns; to which payment well and truly be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.**

Sealed with our seals. Dated this twenty-seventh day of April, A. D. 1899.

**THE CONDITION OF THE ABOVE OBLIGATION, is, that WHEREAS, WILLIAM G. ROCKEFELLER, above named has been duly elected and is about to enter upon the duties of his office as Treasurer of the AMALGAMATED COPPER COMPANY.**

NOW THEREFORE, if he shall in all respects fully and faithfully discharge his duties as such Treasurer during the term for which he is now or may hereafter be elected or appointed, then this obligation is to be void otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of  
Chas. N. King"

F. P. ADDICKS

WM. G. ROCKEFELLER.

IT WAS VOTED that the reading of the minutes of the last meeting be dispensed with.

IT WAS VOTED that each member of the Board of Directors and the Executive Committee receive a fee of Ten Dollars for each meeting attended by him.

IT WAS VOTED that the National City Bank of New York, be appointed transfer agent, and the Central Trust Company of New York, Registrar of Transfers, and that said Transfer Agent and Registrar be authorized and instructed to issue the Capital Stock of this Company to the amount of Seven hundred and fifty thousand shares (750,000).

IT WAS VOTED that the Treasurer be authorized to deposit the funds of the Company in such banks and trust companies as the Executive Committee may direct from time to time.

IT WAS VOTED that the Treasurer be authorized to hire for the use of the Amalgamated Copper Company, a Safe Deposit Box as the Executive Committee may direct from time to time, and to



deposit therein such of the shares, deeds, bonds, funds and other property of the Company, as he may deem expedient from time to time, and that power to open said box be given to each of the following officers:—

President, Vice President, Treasurer or Secretary, when accompanied by a member of the Executive Committee, provided that when anyone of the officers is also a member of the Executive Committee he shall be accompanied by either another officer or another member of the Executive Committee.

Anson R. Flower was then duly elected by ballot a Director of the Company in place of the Hon. Roswell P. Flower, deceased.

IT WAS VOTED that the Executive Committee be authorized and empowered to choose and employ such officers and employees not named in the By-Laws of the Company, as they may deem necessary, and to fix their compensation.

IT WAS VOTED that the Executive Committee be authorized to hire for the Company the rooms on the sixth floor of the easterly wing of No. 52 Broadway, New York City, for such length of time and upon such terms as they may deem expedient.

IT WAS VOTED that the Treasurer be authorized to purchase for the Company, the Seventeen thousand three hundred and fifty-four shares (17,354) of stock of the Colorado Smelting & Mining Company, not already acquired, for the sum of Four hundred and seventy-eight Thousand

five hundred and fifty-four and 66/100 Dollars (\$478,554.66).

IT WAS VOTED that the Treasurer be authorized to pay to the National City Bank, New York, Fifty thousand Dollars (\$50,000) for its services as fiscal agent in selling and issuing the shares of the Amalgamated Copper Company, and receiving the subscription therefor.

The meeting adjourned subject to the call of the President.

(Signed) WM. G. ROCKEFELLER

Secretary.

These proceedings recite the purpose of the Company to acquire 620,000 shares of the Anaconda Copper Mining Company, and those shares were shortly thereafter acquired; 115,719 shares of the Parrot Silver & Copper Company, 83,702 of the Colorado Smelting & Mining Company; all the capital stock of the Washoe Copper Company. The first company was engaged in mining copper, the Parrot the same, the Colorado the same, the Washoe the same. Those were all engaged in producing copper at that time, and Mr. Daly was initially in the Anaconda Copper Mining Company and the Washoe Copper Company. I don't think he had anything to do with the Parrot Silver & Copper Company, or the Colorado Smelting & Mining Company prior to that time; still I am not sure. Those, so far as I knew, were owned by other parties. The Diamond Coal & Coke company was engaged in mining coal in Diamondville, Wyoming. Mr. Daly was interested in that

company. It supplied coal for the plants operated in Butte and Anaconda. The smelter of the Anaconda and the Washoe Company was in Anaconda. The Big Blackfoot Milling Company was engaged in the lumber business. It was providing the mines in Butte with mine timbers. The Capital Lumber Company is a subsidiary of the Big Blackfoot. That is the local agency at Helena. The St. Regis Lumber Company is a lumber producing company with mills at St. Regis. It likewise was furnishing mine timbers to the mines near Butte. The D. J. Hennessy Mercantile Company is engaged in the business of dry goods, notions, general merchandise, selling its wares to the miners engaged in working in the mines and anybody else who is willing to buy. The same with the Copper City Commercial Company at Anaconda; also the Anaconda Meat Company at Anaconda, right across the street from the commercial company, which was likewise engaged in selling its products to the people working in the mines and smelters. As to the stocks of the Diamond Coal and Coke Company, the Carbon Coal Company, the Big Blackfoot Milling Company, the St. Regis Company, the D. J. Hennessy Mercantile Company, and the Copper City Commercial Company and the Montana Meat Company, I don't know that the entire capital stock was acquired by them at this time. If I remember, did not Mr. Hennessy own part of the Mercantile and Copper City. I am not positive whether my records will enable me to tell just how much of this

stock was actually acquired. I will look it up. It appears that at the time of the organization of the Amalgamated, the stocks of the Boston and Montana and Butte and Boston were not acquired by the company. The officers did not become interested in that stock at the time of the organization. It was a year later or two years later that the company eventually acquired a majority control. I don't know whether the company or the officers of the Amalgamated Copper Company, Mr. Daly and his associates became heavily interested in the stocks of the Boston and Montana and the Butte and Boston. I think the next reference to the acquisition of any property by the Amalgamated Copper Company is shown in here. (Witness refers to book.)

MR. WALSH: I will offer in evidence the record of the meeting of the Board of Directors of the Amalgamated Copper Company, held May 21st, 1901, commencing on page 43 and extending down to and including page 45.

Thereupon, the defendants objected to the receipt of said record in evidence, and to the offer of the complainants, for the reason that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants, and each of them, excepted.

(Whereupon record of the meeting of the Board of Directors of the Amalgamated held May 21, 1901, was offered and received in evidence and

marked complainants' Exhibit "E", and is in the words and figures following, to-wit:

**Exhibit E.**

An adjourned meeting of the Board of Directors of the Amalgamated Copper Company, was held at the New York office of the Company, No. 52 Broadway, on Tuesday, May 21st, 1901, a quorum being present.

Mr. Rogers took the Chair.

The minutes of the last meeting of the Board of Directors held April 30th, 1901 were read and approved.

The Chairman laid before the meeting a letter dated May 18th, 1901, which he had received from Messrs. Kidder, Peabody & Company, offering, subject to the approval of the shareholders of the Boston & Montana and Butte & Boston Companies to sell to this Company, in exchange for its full-paid stock, at least two-thirds of the Capital Stock of each of those Companies, at the rate of \$425. per share, for the stock of the former Company, and \$115. per share for the stock of the latter Company.

The Chairman stated that, in the early part of April, he had had some communications with Mr. Winsor, of Messrs. Kidder, Peabody & Company, on the subject, pursuant to which the latter had requested the shareholders to deposit their certificates of stock with them; that Mr. Winsor was unable to be present at the meeting today, but would be able to come over tomorrow to explain the situation in Boston and express his views in

relation to the present situation. The Chairman then stated that, for the purpose of protecting the investment, which the Amalgamated Copper Company had already made, not only in the stock of the Boston and Montana Company, and of the other Companies at Butte, which owns claims adjacent to each other, and especially those which had been attacked or might be attacked by the Heinze litigants, he had thought it might be advisable for the Amalgamated Company to acquire the stocks of two Boston Companies, if a majority of the stocks of both companies could be obtained upon reasonable terms, to be approved by the stockholders, at a Special Meeting to be called for that purpose, and that, as he was personally a stockholder and officer of the Butte & Boston Company, he would not take any part in the negotiation.

The Chairman then detailed the various steps which had been taken by Mr. Winsor to induce a deposit by the shareholders of the two Companies, and read to the Committee a letter of Messrs. Kidder, Peabody & Company, dated April 15th, 1901, to the Directors of the Butte and Boston Company, and a letter of Mr. Rockefeller, as Secretary of that Company, to the shareholders, and also a circular letter addressed to Messrs. Kidder, Peabody & Company, to the shareholders of the Boston & Montana Company, and stated that he had been informed that more than two thirds of the holders of the shares of each Company had deposited their certificates with Messrs. Kidder, Peabody &

Company, who however, reported that many of the shareholders were showing a good deal of uneasiness over the legal complications in New Jersey, and that Messrs. Kidder, Peabody & Company were over-run with inquiries by shareholders, who were growing impatient over the delay, and that if any propositions were to be carried through, no time should be lost in putting it into effect.

Mr. Flower stated that Messrs. Bacon, Olcott and Stillman were not officers or directors of either the Boston & Montana Consolidated Copper-Silver Mining Company, or the Butte and Boston Consolidated Mining Company, and that as he understood, they had no interest whatever therein, which was admitted to be a fact by those gentlemen, and therefore on his motion, the following resolutions having been duly seconded, were unanimously adopted:—

**RESOLVED** That Messrs. Bacons, Olcott and Stillman, be and they are hereby appointed a committee with full power to investigate and determine all questions involved in the proposed purchase of the stocks of the said two Companies, with full power to employ experts to examine and report upon the properties of the said Companies, and take such other steps as they may deem advisable to fully inform themselves upon the subject, and also with full power to contract for the purchase of said stocks, subject, however, to the approval of this Board and of the shareholders



of the Company, at a meeting to be duly called for that purpose.

RESOLVED That it is advisable that the capital stock of this Company be increased from \$75,000,000 to \$155,000,000.

RESOLVED That a meeting of the stockholders of the company be and the same is hereby called, to be held at the Company's office in the City of Jersey City, New Jersey, on the 6th day of June, 1901, at 10 o'clock in the forenoon, to take action on the foregoing resolution for the increase of the capital stock of the Company.

RESOLVED That there be submitted to the said meeting of the stockholders, the question of the advisability of acquiring the stocks of the Boston & Montana Consolidated Copper & Silver Mining Company, and of the Butte and Boston Consolidated Mining Company either for cash or by issuing therefor full paid stock of the Company.

RESOLVED That the stockholders be notified that there will be also submitted at such meeting a report of a special committee appointed by the Board to consider the terms of the acquisition of said stocks, together with such recommendation, if any, as the Board may make with respect thereto.

RESOLVED That when the meeting adjourns it do adjourn to meet on Wednesday, May 29th, 1901, at 3:30 P. M.

On motion the meeting then adjourned.

(Signed) WM. G. ROCKEFELLER,

Secretary.

Q. Now, Mr. Melin, I notice the record recites as follows: "The Chairman then stated that for the purpose of protecting the investment which the Amalgamated Copper Company had already made not only in the stock of the Boston and Montana Company and of the other companies at Butte, which own claims adjacent to each other." Apparently, then, the Amalgamated Copper Company had acquired some interest in the stock of the Boston and Montana prior to this date? A. Don't you think that applies to the 620,000 shares of Anaconda?

Q. It says, "Not only in the stock of the Boston and Montana Company." A. Here is the first reference. Meeting of December 21st, 1899, 10,000 shares.

Q. You find an earlier record, do you? A. Yes, sir.

MR. WALSH: I offer in evidence the proceedings of the meeting of the Directors of the Amalgamated Copper Company under date of December 21st, 1899, appearing on page 29 of the Book of Minutes, as follows: "It was voted that the Amalgamated Copper Company purchase 10,000 shares of the Boston and Montana Consolidated Copper and Silver Mining Company for the sum of two million, thirty-seven thousand, five hundred and twenty-eight dollars and eighty-six hundredths (\$2,037,528.86). It was voted that this Company purchase 54,000 shares of the Anaconda Copper Mining Company for the sum of two million, eight hundred and twenty-six thousand, four

hundred and forty-five dollars and eighty-two hundredths (\$2,826,445.82)."

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

The ledger does not show this. I have not got the ledger of 1900 and 1901. This is Ledger No. 2 and shows \$187,531,422.82, but I cannot give you the details, except from 1905. The first ledger I have shows an investment of about 187,000,000 odd dollars, on the last entry. That is ledger No. 2. I don't know where Ledger No. 1 is. Ledger No. 2 commences with my assumption of the office. This can be analyzed, but it will take some time to do so. My books will show the items that made up that amount since 1905, that is, will show whatever was acquired since 1905, but my books will not show what went to make up that amount, but it can all be analyzed, and all items shown as far as that is concerned, I expect. I am unable to give the items that go to make up this one hundred and eighty-seven million. The last entry in my ledger, 1913, shows this total, the very last entry, September. The amount I started off in my Book No. 2 when I took hold was January 1st, 1913, \$187,531,422.82 October 1st, 1906, \$154,330,847.18; additions, \$33,200,575.64. Those additions I could, of course, identify for you and trace out easily enough. Except as the records indicate I am unable to tell you at all what that \$154,-

000,000 consists of. The amount of investment that I started off my books with I think was \$154,000,000. That amount was transferred from Ledger No. 1, I suppose, given to me as a balance. As a matter of course I had Ledger No. 1 in my possession at one time. These entries were handed to me from a trial balance, and I have forgotten whether the auditors did it or not. I saw the book myself, but I don't know where it is now. There is no particular reason why it left the secretary's office, only there is not any more room in that safe there. I have one set of books in there now. I don't know when I last saw it, I think seven or eight years ago. I don't recollect whether I saw them since or not. I think not. That ledger was never in my possession. I cannot tell exactly how long after I took charge of the office I last saw it. It was not as long as a year or so. I didn't become answerable as secretary and treasurer for this book if I verified the accounts that were handed over to me on the trial balance, and made the transfer. The Journal and the cash book of that set have disappeared from the secretary's office that I know of. I don't know where they are. I cannot tell you what these acquisitions since I took the office amounting to \$33,000,000 or thereabouts consisted of, but I can tell you in a very short time. I cannot tell you offhand. That total of 187,000,000 represents the amount now owned by the company January 1st, 1913. These are in round figures. I have not worked out all the credits and the smaller debits. There

was \$75,000,000 to start with. That shows here in the incorporation. I think the B. and M. foots \$80,000,000; that would be \$155,000,000, that would show some credits here.

MR. GARVER: Starting off with that 154 odd million. The original purchase referred to in the records of the proceedings represents \$75,000,000. The Boston and Montana and the Butte and Boston purchases represent \$80,000,000 more. That is my recollection, making practically \$155,000,000, or as I have told you, one hundred and fifty-four million odd. There might have been some additions and some deductions, bringing this total. I have not the number of shares here in one of the companies, but it does not matter. It is very small, Butte Water Company stock, \$39,000; Butte and Boston bonds, \$180,000; then here was a purchase of 50,000 shares of the Butte Coalition Mining Company \$825,000; 154,000 shares Green Cananea Copper Company, \$1,790,000, 150,000 shares of Inspiration Consolidated Copper Company, \$3,000,000; United Metal Selling Company, \$12,348,000; Big Black Foot Timber Lands, \$2,881,748; W. A. Clark properties, Butte, Montana, \$5,000,000; Washoe Smelter, \$7,200,000; that foots a little over the total I gave you. I have given you the number of shares of the company so far. I can look up this Butte Water. Of course, there would be no shares on the Timber Lands, and there are no shares on the W. A. Clark properties. I cannot give you the total number of shares of the Green Cananea Company that are

outstanding without looking that up. I have not the total number of shares of the Anaconda here in this list. It is in the original. It shows that we purchased 620,000 shares of the Anaconda. That is when your company was a thirty-million dollar corporation. Those were \$25 shares and the company was \$30,000,000. That makes 1,200,000 shares and of that we got 620,000. Now, taking the next, the Parrot, I have got 115,719 shares. There were 229,870 issued, I think. I can get that for you in a minute,—229,850. Of the Colorado Smelting & Mining Company there were 100,000 shares, I think, of which we got 83,702. I am quite sure that subsequently we acquired more. We had all of the Washoe. The amount of that was two million. 30,464 at \$100 a share, were issued. As to the subsequent acquisitions, the Boston and Montana, I will have to refer to this (Witness refers to Minute Book.), I will read off this other Anaconda as it is purchased here. Here is 42,000 shares added to that 620,000. The date of that is September 21, 1899. The Copper hand book of 1908 gives the stock of the Boston and Montana at 150,000 shares at \$25 a share, and it says the Amalgamated owns practically all. As to the date of its acquisition of the stock of the Boston and Montana,—that is the trouble, I cannot find but ten thousand shares in here. We will start then with ten thousand shares, December 21st, 1899.

MR. WALSH: I will offer the minutes of the stockholders' meeting of June 6th, 1901 appearing at page 51 to 66 inclusive, being proceedings in

connection with the acquisition of the stock of the Boston and Montana and Butte and Boston.

To which offer the defendants then and there objected, on the ground that the same was wholly incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Whereupon minutes of meeting of June 6, 1901, were offered and received in evidence and marked Complainants' Exhibit "F", and are in the words and figures following to-wit:

**Exhibit F.**

A Special Meeting of the Stockholders of the Amalgamated Copper Company was held, pursuant to notice, at the office of the Company, No. 243 Washington St., Jersey City, New Jersey, on June 6, 1901, at 10 o'clock in the forenoon.

Mr. R. V. Lindabury called the meeting to order, and nominated Mr. W. H. Corbin as Chairman of the meeting; the nomination having been duly seconded, a vote was taken thereon; all the votes being in the affirmative except that of Mr. C. H. Venner, who voted in the negative, Mr. Corbin was thereupon declared duly elected Chairman of the meeting and took the Chair.

Upon motion duly seconded, Mr. George H. Church was elected Secretary of the meeting.

Mr. C. H. Venner then moved that the meeting adjourn to June 21st, 1901, at 10 o'clock A. M. at the same place. The Chairman informed him that he could not at that time entertain such a mo-



tion, as the preliminary business of organization of the meeting had not been completed.

The Chairman then appointed Mr. LeGrand Bouker and Mr. R. S. Jordan as Inspectors of Votes of the meeting, and those present as Stockholders or Proxies were requested to notify the Inspectors of their presence and present their proxies, if any, for the purpose of verification with the list of Stockholders entitled to vote.

The Inspectors having taken the oath for such purpose prescribed and having noted the Stockholders present in person and received the proxies of those represented by proxy, reported the number of shares represented by Shareholders present at the meeting in person or by proxy to be 591,300 shares, out of a total issue of 750,000 shares being a quorum of more than two-thirds of the Capital Stock.

At the request of the Chairman, the Secretary then read the notice of the meeting, the affidavit of Paul H. Webster as to due service of the same, and the circular letter of William G. Rockefeller, Secretary, enclosed therewith. He also submitted the proofs of the publication of the notice of meeting, in the various newspapers.

The Chairman then stated that if it was desired that any of these papers be spread upon the minutes, a motion to that effect was now in order, and, on motion duly seconded, it was voted that the notice of the meeting given by the Secretary, together with the proofs of mailing the same and the proofs



of publication, be spread upon the Minutes. They are as follows:—

**AMALGAMATED COPPER COMPANY.  
NOTICE OF SPECIAL MEETING OF STOCK-  
HOLDERS.**

Notice is hereby given that a special meeting of the Stockholders of the Amalgamated Copper Company will be held at the Company's office, No. 243 Washington Street, Jersey City, New Jersey, on the sixth day of June, 1901, at ten o'clock in the forenoon, to take action upon the following resolutions passed by the Board of Directors at a meeting duly held at the office of the Company in the City of New York, May 21, 1901.

"RESOLVED, that it is advisable that the Capital Stock of this Company, be increased from \$75,000,000 to \$155,000,000.

"RESOLVED, that a meeting of the stockholders of the Company be and the same is hereby called, to be held at the Company's office, in the City of Jersey City, New Jersey, on the sixth day of June, 1901, at ten o'clock in the forenoon, to take action on the above resolution.

"RESOLVED, that there be submitted to the said meeting of the stockholders the question of the advisability of acquiring the stocks of the Boston and Montana Consolidated Copper and Silver Mining Company, and of the Butte and Boston Consolidated Mining Company, either for cash or by issuing therefor full-paid stock of this Company.

"RESOLVED, that the stockholders be notified that there will be submitted at such meeting the

report of a Special Committee appointed by the Board to consider the terms of the acquisition of said stocks, together with such recommendation, if any, as the Board may make with respect thereto." May 22, 1901.

WILLIAM G. ROCKEFELLER,  
Secretary.

State of New Jersey,  
County of Hudson, ss.

PAUL H. WEBSTER, of full age, being duly sworn, on his oath, says:

1. That on May 23, 1901, he was a clerk in the office of the Amalgamated Copper Company, at 52 Broadway, New York City.

2. That on the said day he served a notice, a copy of which is hereto annexed, marked "exhibit A," upon each and every one of the Stockholders of the Amalgamated Copper Company, by mailing to such Stockholders, respectively, a copy of the said notice at the general post office in the City of New York enclosed in sealed envelopes, with the postage thereon pre-paid, and addressed to each of the said Stockholders at his last known post office address, as it appeared on the books of the said Company. In each of the said envelopes, in which the said notice was enclosed, there was also enclosed a circular letter, a copy of which is hereto annexed, marked "exhibit B."

3. That a copy of the said notice was also published every day, commencing on May 23, 1901, until and including the morning of June 6, 1901, in each of the following daily morning papers

published in the City of New York: Tribune, Times, Sun, Herald Journal of Commerce and Commercial.

And a copy of said notice was published every day, except Sunday, commencing on May 22, 1901, until June 5, 1901, in each of the following daily evening papers published in the City of New York: Post, Mail and Express and Commercial Advertiser;

And the said notice was also published on May 25, 1901, and June 1, 1901, in the Engineering and Mining Journal and the Financial Chronicle, Journals published in the City of New York.

4. That a copy of the said notice was, during the same period, published in each of the following daily morning papers published in the City of Boston; Journal, Herald and Globe, and in each of the following evening papers published in said City: Transcript and Advertiser.

5. That a copy of the said notice was also published during the same period on every day, except Sunday, in the Jersey City Journal; and the notice was also published in the Newark Advertiser on May 22, 23, 27, 31, and June 3 and 5.

PAUL H. WEBSTER.

Subscribed and sworn to before me this 6th day of June, 1901.

R. V. LINDABURY,

M. C. C. of N. J.

52 Broadway, New York, May 22nd, 1901.

To the Stockholders of the Amalgamated Copper Company:

Dear Sirs:—

Your attention is called to the enclosed notice of a special meeting of the Stockholders of the Amalgamated Copper Company, to be held at the Company's office in Jersey City, on June 6, 1901.

A proxy is enclosed for your signature, in case you wish to avail yourself of it. It has been made to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, stockholders in the Amalgamated Company, because they have no substantial interest in either the Butte and Boston Company or the Boston and Montana Company, and because some of the Directors and officers of the Amalgamated Company have such interest.

Yours truly,

WILLIAM G. ROCKEFELLER,

Secretary.

The Chairman then announced that the meeting was open for the transaction of the business to be brought before it.

Mr. C. H. Venner moved that the Inspectors of Election be requested to report specifically as to the number of shares of stock represented here in person, and as to the total number of shares of Stock represented by proxies, and further that they be specially requested to report the number of shares represented by the proxies sent out by William G. Rockefeller, Secretary of the Amalgamated Copper Company enclosed in his circular letter of May 22, 1901, which said proxies run in favor of James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or any of them.

After Mr. Venner had spoken at considerable length in support of his motion, a vote was taken thereon, and it was declared by the Chairman to have been lost.

Mr. Venner then asked for a Stock Vote upon this motion, and stated that he doubted the vote. The Chairman, however, declared that he was too late in asking for a Stock Vote, and that the vote had been so obviously against his motion, that he could not entertain his request.

Mr. Venner then moved, as proxy for the C. H. Venner Company, that no votes be received at this meeting of the Stockholders upon proxies given to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or any of them on the form sent out by the Secretary of the Amalgamated Copper Company, with his circular dated May 22, 1901, and addressed to the Stockholders of the Amalgamated Copper Company, on the ground that such proxies have been illegally and improperly solicited, and on the further ground that said proxies have not been properly executed by the persons whose names may be subscribed thereto.

Upon vote being taken, the Chairman declared that the motion was lost. Mr. John A. Garver then said:—At a meeting of the Board of Directors of the Amalgamated Copper Company held May 21, last, a Special Committee was appointed, consisting of Mr. Robert Bacon, Mr. F. P. Olcott and Mr. James Stillman, to consider the proposition which had been made by Messrs. Kidder, Peabody & Co. on behalf of Stockholders of the Boston and

Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, to sell to the Amalgamated Copper Company the majority of the shares of the Capital Stock of the Boston and Montana and the Butte and Boston Companies. That committee immediately entered upon an investigation of the subject and entered into negotiations with Messrs. Kidder, Peabody & Company, and they have requested me to submit their report made at the Directors' meeting held the 4th of this month, so that the stockholders may be informed and take such action on the Report as they deem advisable.

Mr. Garver then read the report, which, upon motion duly seconded, was ordered spread in full upon the Minutes.

The report is as follows:—

#### REPORT OF SPECIAL COMMITTEE.

To the Directors of the Amalgamated Copper Company:—

We, the undersigned, a Special Committee appointed at a meeting of the Board of Directors, held on May 21, 1901, for the purpose of considering an offer made by Messrs. Kidder, Peabody & Co. to sell to this Company a majority of the shares of the capital stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, with power to negotiate the terms of a contract to purchase the shares of the said Companies, do hereby report as follows:—

Mr. Clarence King, a well known mining engi-

neer, recently made an affidavit, in which he stated that the purchase of the properties of the Boston and Montana and Butte and Boston Companies, at a price not exceeding \$75,000,000 would be a wise and conservative act. Within a few days he made that affidavit, Mr. King, who was in ill health, started for Arizona; and although we have endeavored to reach him by telegraph, we have not yet heard from him, as he had apparently not arrived at his destination. We are informed, however, by persons who conversed with him in regard to his affidavit, that he was not asked to state whether the properties of the Boston and Montana and Butte and Boston Companies were worth more than \$75,000,000; and we understand that, in making his estimate, it was not intended by him to state that the combined values of these properties did not exceed \$75,000,000.

In order that we might be able to reach a conclusion entirely independent of the valuations heretofore made, we requested Mr. H. A. Keller, an independent mining engineer of San Francisco, of high standing, to make a special examination of the properties and report upon their value. We also requested Messrs. Ricketts & Banks, of New York, who are among the most eminent mining engineers in the country, to report upon the properties. Mr. Keller immediately visited Butte, on receipt of the telegram, and Messrs. Ricketts & Banks also had a special examination of the properties made. These reports are herewith submitted, that of Mr. Keller having been telegraphed to

us, as there was not time to obtain a written report from him.

Owing to the peculiarities in the mining laws, many questions of title to veins of ore arise among owners of adjacent claims, and it is often extremely difficult to determine the question of title. The cost of litigation over these claims is very great, owing to the fact that much underground engineering work has to be done to expose the formation of veins, and that this can be done only by the employment of expert mining engineers. The properties of the Anaconda and Parrot Companies, which are controlled by the Amalgamated Company, are adjacent in a number of places, to properties belonging to the Boston and Montana Company and the Butte and Boston Company; and the properties of these two Companies are also, in a number of places, adjacent to each other; so that conflicting claims may arise among the different Companies, at any time. The Amalgamated Copper already owns about 10,000 shares of the capital stock of the Boston and Montana Company; and as all of the Companies have become involved in very expensive litigation, it has seemed to us to be decidedly to the interest of the Stockholders of the Amalgamated Company to acquire a majority of the stock of the Boston and Montana and Butte & Boston Companies. Not only can considerable economies in the management of the properties be effected in this way, but all the Companies will thus be brought into closer alliance, having a common interest, and questions of



title, which are likely to arise from time to time among the various Companies, can be adjusted in a fair and businesslike manner, without the tremendous expense of litigation necessarily involved in settling such controversies in the courts, and which has already been such a heavy and burdensome tax upon all of the Companies.

The question of title seemed so serious to Mr. Keller, that, in his report, he has declined to distinguish between the properties of the Boston and Montana and Butte and Boston Companies, and merely reported their combined value to be at least \$80,000,000. Messrs Ricketts & Banks, while recommending that the properties, if acquired, should be purchased together, estimated that the market value of the properties of the Boston and Montana Company was worth \$65,000,000, and that of the Butte and Boston Company, \$20,000,000.

The present market value of the capital stock of the Butte and Boston Company is about \$116 per share, representing, for the entire capital stock, a market value of over \$23,000,000, and that of the Boston and Montana Company is about \$450 per share, representing, for the entire capital stock, a market value of over \$67,000,000; and the combined market value of the capital stock of both Companies is in excess of \$90,000,000.

We submit herewith a statement furnished to us by the Assistant Treasurer of the Company, with respect to the market values of the stocks of the Boston and Montana and Butte and Boston

Companies, the market price for refined copper at present as compared with recent years, the dividends paid by the Boston Companies and other facts and circumstances bearing on the value of the stocks of the two Companies.

Additional difficulty attended our negotiations with Messrs. Kidder, Peabody & Co., owing to the delay which had taken place as the result of legal proceedings in New Jersey, since they originally sent out their circular letters on April 15, and to the difficulty of securing additional time from the depositing shareholders. The most advantageous arrangement which we have been able to make with them on behalf of the Amalgamated Company, is to issue the full paid stock of this company, at the rate of five and one-third shares for one share of the Boston and Montana Company and one and one-third shares of the stock of the Butte and Boston Company. While this left them to adjust the proportions between the respective Stockholders of those Companies and themselves, it assured to this Company the stocks of those Companies at an aggregate valuation of \$80,000,000, which was within the limit of the estimates made by the experts, employed by the Committee. Moreover, for the reasons heretofore stated, we were convinced that it would be judicious for this Company to acquire a majority of the stock of either of the Boston Companies without that of the other, so as to ensure the control of both.

It has been arranged with Messrs. Kidder, Peabody & Co., as part of the purchase price, that they

should be paid a reasonable sum for their compensation, and that, in case there should be difference of opinion as to the amount of this, it should be left for arbitration to the Presidents of two Trust Companies in the City of New York, who, if unable to agree, will select a President of another Trust Company, the decision of the majority to be binding.

After considering the many facts and conditions which enter into the question, we have unanimously reached the conclusion that it would be highly advantageous to the Amalgamated Company if it acquired the shares of the Boston and Montana and Butte and Boston Companies on the terms above indicated; and if the interests of the two Boston Companies are united with those of the Amalgamated Company, an additional value will be given to the stocks of other Companies heretofore acquired and now owned by your Company; in other words, the effect of such acquisition will be to enhance the intrinsic value of the outstanding stock of your company.

All of which is respectfully submitted.

New York, June 4, 1901.

ROBERT BACON,  
F. P. OLCOTT,  
JAS. STILLMAN.

Mr. Venner moved that the meeting adjourn until June 21, 1901, at 10 o'clock A. M. at the same place.

The motion having been seconded and put to vote was lost.

Mr. Venner then moved that all proxies purporting to be executed by Stockholders of this Amalgamated Copper Company and now in the hands of the Inspectors of Election appointed at this meeting, running to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, and any and all votes tendered to this meeting by virtue of any such proxies, be not received on the ground that said proxies are improperly executed, if executed at all, in this that they were not stamped by the persons executing those proxies, nor was the stamp cancelled by them, nor was any authority given by any of them to any person to stamp those proxies for them, nor has the Amalgamated Copper Company any authority under its charter, or under the common law, nor has it received any authority from any Stockholder to purchase and affix the requisite revenue stamp to any of said proxies, and the act of the Amalgamated Copper Company, or any officers in its behalf in affixing those stamps, is an unauthorized act, and the purchase of any such stamps by the Amalgamated Copper Company, or any person on its behalf, is unauthorized by law and a misappropriation of funds of the Amalgamated Copper Company.

The Chairman then put the motion to vote as follows: The question is upon the motion of Mr. Venner, that all proxies presented at this meeting, running to James Stillman, Robert Bacon, A. R. Flower and James Jourdan, or either of them, be not received by the meeting, and that any votes offered by virtue of those proxies be rejected.

The vote was largely in the negative and the motion was declared lost.

Mr. Lindabury moved the following several resolutions:—

WHEREAS, in the judgment of the Stockholders of this Company, the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company are reasonably worth at least \$80,000,000, now, therefore it is

I. RESOLVED, that the Report of the Special Committee of the Directors be accepted and the recommendation therein contained be approved and the same is hereby adopted.

II. RESOLVED, that the Capital Stock of the Amalgamated Copper Company be increased from the present authorized amount thereof, to-wit, \$75,000,000, consisting of 750,000 shares, of the par value of \$100 each, to \$155,000,000, to consist of 1,550,000 shares of the par value of \$100 each.

III. RESOLVED, that the Directors of this Company be and they hereby are authorized to acquire the shares of the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, by issuing in exchange therefor, the full paid capital stock of this Company, at the rate of five and one-third shares of such stock for one share of the capital stock of the Boston and Montana Company and one and one-third shares of the capital stock of the Butte and

Boston Company, such acquisition to be made, however, only in case at least a majority of the shares of the said Boston and Montana and Butte and Boston Companies can be so acquired.

These resolutions were duly seconded.

Mr. Venner objected to the consideration of the resolutions at this meeting, because of the order made by the Court of Chancery of New Jersey on June 5th, in a suit in equity brought by Calvin O. Geer and the C. H. Venner Company against the Amalgamated Copper Company. He then read the order made by Vice Chancellor Stevens; and also read and filed with the Secretary the following protest on behalf of the C. H. Venner Company:—

On behalf of the C. H. Venner Company, a stockholder of the Amalgamated Copper Co. I respectfully and earnestly protest against any action being taken at this meeting to authorize the increase of the capital stock of the said Amalgamated Copper Co. from \$75,000,000 to \$155,000,000 for the reason that such increase is unnecessary and contrary to the interests of the stockholders of said Company, in this, that it is proposed to use said increase of stock of \$80,000,000 to purchase the shares of stock of the Boston and Montana Consolidated Copper & Silver Mining Co. and the Butte & Boston Consolidated Mining Company, which under the existing circumstances and conditions affecting said stocks, ought not to be acquired by the Amalgamated Copper Co.; and for the additional reason that the stock of the Butte

and Boston Consolidated Mining Co. is not worth any such price as it is proposed the Amalgamated Copper Co. shall pay for it; and because a large proportion of the stock of said Butte and Boston Company is rumored to be owned by certain of the directors of the Amalgamated Copper Co. and their associates who are in control of the Amalgamated Copper Company, and the purchase of said shares of the Amalgamated Copper Company will, if so be for the benefit of those persons and greatly injure other stockholders of the Amalgamated Copper Company, who have no interest in stock of Butte and Boston Consolidated Mining Co. and because the proposed issue of stock in exchange for stock of the Butte and Boston Consolidated Mining Company will be illegal. And because to have an authorized and unissued amount of \$80,000,000 Capital stock in the treasury of the Company subject to issue on the order of the directors will be an element of great danger to the Stockholders.

C. H. VENNER.

The Chairman stated the motion now pending to be upon the resolutions offered by Mr. Lindabury, and asked Mr. Venner if he was objecting to considering those?

Mr. Venner said: "My protest is germane to the motion made by Mr. Lindabury. I move as an amendment, without waiving my objections to the motion moved by Mr. Lindabury, that any and all offers made to the Amalgamated Copper Company, or any of its officers or Directors, by Kid-

der, Peabody & Co. for the sale to the said Company of any shares of the Capital Stock of the Boston and Montana Consolidated Copper & Silver Mining Company, or the Butte and Boston Consolidated Mining Company, be produced and read and submitted to this meeting."

The Chairman ruled the proposed amendment to be out of order.

Mr. Garver moved as an amendment to the resolutions offered by Mr. Lindabury, the following:

"IV. That the carrying out of the foregoing Resolutions be subject to the order of the Chancellor of New Jersey, made on June 5th, 1901, under supplemental bill filed by Galvin O. Geer and another against this Company."

This amendment was accepted as a part of the original resolutions moved by Mr. Lindabury.

Mr. Lindabury moved the following:—

RESOLVED, that the polls be now opened for the purpose of taking a vote, by ballot, upon the resolutions now before the meeting.

Mr. Venner moved to amend Mr. Lindabury's motion so as to preclude the voting of any proxies given or purporting to be given by the Stockholders to James Stillman, Robert Bacon, A. R. Flower and James Jourdan.

Which amendment was put to vote and lost.

Mr. Lamb as attorney and proxy for Charlotte E. Smith objected to the adoption of the resolutions on the ground that the information furnished the Stockholders was not sufficient.

Mr. Garver then read to the meeting in full the



reports of the experts, Mr. H. A. Keller and Messrs. Ricketts & Banks, referred to in the report of the Special Committee of Directors, and they were ordered to be spread upon the Minutes. They are as follows:

June 3, 1901.

St. Paul, Minn.

James Stillman, Esq.,

Care Amalgamated Copper Company,

72 Broadway, New York.

I have examined for your committee properties of Boston and Montana and Butte and Boston, at Butte and Great Falls, without giving details, owing to the limited time I may command for examination. I have no hesitancy in reporting that in my judgment, under present conditions, the aggregate value of the properties of these two companies is reasonable at eighty Million Dollars. On this I considered a friendly adjustment between these companies of possible conflicting title to ore bodies of great value.

H. A. KELLER.

RICKETTS & BANKS

Chemists, Assayers and Mining Engineers,

104 John Street.

New York, June 3rd, 1901.

Messrs. ROBERT BACON

F. P. OLCOTT and

JAMES STILLMAN,

Committee of the Board of Directors of the Amalgamated Copper Company.

c/o Messrs. Sherman & Sterling,

44 Wall Street, New York.

Gentlemen:

In accordance with the instructions contained in a communication received from Messrs. Sherman & Sterling, under date of May 23rd, 1901, we have an examination of the properties of the Boston & Montana Consolidated Copper & Silver Mining Company and of the Butte & Boston Consolidated Mining Company, located at Butte, Montana, and have also examined the Works of the former Company, at Great Falls, Montana, for the purpose of arriving at a fair valuation of all of the same. We have had the mine workings measured and sufficiently sampled to give a clear idea of the ore reserves and have paid special attention to the continuation of the ore bodies in depth. We have not, however attempted to prepare elaborate maps and tables to annex to this report, as we assume that your principal wish is to have our estimate as to value. The Smelting Works of both of the Companies have been examined as to their capacity and facilities, for economical operation, and in the case of the works of the Butte & Boston Consolidated Mining Company we have paid special attention as to its earning capacity as a "custom" plant.

The accounts of both Companies have been examined as to value of properties, past and present production earnings and dividends. In this connection, we think it proper to state that the properties of the Companies have been carried in the books at a merely nominal value, viz.: in the case of the Boston & Montana Consolidated Cop-

per & Silver Mining Company, \$4,482,797.71, while in the case of the Butte & Boston Consolidated Mining Company, it is \$2,000,000, which, we are informed, is the amount paid for the property by the reorganization committee.

We find, owing to the peculiar situation of the large ore bodies in the eastern portion of the Pennsylvania Mine, belonging to the Boston & Montana Consolidated Mining Company, and in the "Michael Devitt" claim, belonging to the Butte & Boston Consolidated Mining Company, that there is considerable doubt as to the real ownership of these ore bodies, as between the two companies, although it is evident that they belong to one or the other. It will, in our opinion, take a great deal of time and money to determine this question of ownership. As we have, however, decided to report that for various reasons we cannot recommend that the properties of either of the Companies be acquired without the purchase of those belonging to the other at the same time, we have considered it best, as it will not make any difference in the total valuation, to assign these ore bodies to the Company to which they will in our judgment, be finally found to belong, viz.: The Butte & Boston Consolidated Mining Company, although they underlie the Pennsylvania claim of the Boston & Montana Consolidated Copper & Silver Mining Company.

Taking as a basis of valuation the earning capacity of the Companies as shown by their records up to the present time, their probable life, as

shown by the condition of the Mines at Butte, and the present value of the assets of both Companies, we have arrived at the following conclusions:—

I. That the market value of the properties of the Boston & Montana Consolidated Copper and Silver Mining Company, under present conditions, is sixty-five million (\$65,000,000.00) dollars.

II. That the market value of the properties of the Butte & Boston Consolidated Mining Company, under present conditions is twenty million (\$20,000,000) dollars.

III. We recommend that the ownership of all the properties of both of these Companies be acquired, for the reason that if taken together they would have a greater aggregate value than if considered individually and under separate control. We do not, however, for reasons already stated, recommend that the properties of either of the Companies be acquired without the purchase of those owned by the other.

Respectfully yours,  
RICKETTS & BANKS. (SEAL).

June 3, 1901.

Messrs. ROBERT BACON,  
F. P. OLCOTT,  
JAMES STILLMAN,

Special Committee.

Gentlemen:—

In accordance with your request, I beg to submit the following facts in reference to the market values of the Capital Stocks of the Boston and Montana Consolidated Copper and Silver Mining

Company and the Butte & Boston Consolidated Mining Company:—

These stocks have for several years been listed on the Boston Stock Exchange, and have been dealt in continuously there and also in the New York market. I am informed that the stock of both of the Boston Companies is very widely held, there being about 800 different holders of the Stock of the Butte and Boston Company (which consists of 200,000 shares of the par value of \$10 each) and nearly 3,000 different holders of the stock of the Boston and Montana Company (which consists of 150,000 shares of the par value of \$25 each.) The present market value of the Capital Stock of the Butte & Boston Company is about \$116 par value, and that of the Boston and Montana Company is about \$450 per share. There is reason for believing that this represents the reasonable value of the properties, because the Stock is highly held for investment purposes, a great deal of it being in the name of Trustees and other persons acting in a fiduciary capacity; and if the market value is fictitious or unreasonably high, it is reasonable to assume that the conservative holders of the stock would dispose of it.

The present market price of the Stocks of these Companies, considering the great advance which has taken place in nearly all stocks dealt in on the New York and Boston Exchanges during the past year, is less than it was in 1899, as compared with the prices prevailing at that time and now for the great majority of first class securities. More-

over, since then the price of copper has very considerably advanced and is higher today than it has been for many years; the market price for the present year having been about 17 cents per pound for refined copper as against about 16 1-5 cents per pound in 1900, and 15½ cents per pound in 1899; while, prior to 1899, the price fluctuated for many years between 9½ and 11½ cents per pound. The demand for copper and its largely increased use in recent years, together with the fact that the sources of supply have not been to any considerable extent increased, have caused, and are likely to maintain, the present high price of copper. Constant improvements are being made in the methods of extracting and treating the ores, and the cost of production will be further reduced as additional improvements are made.

The Boston and Montana Company has paid out in dividends, since 1888, \$22,475,000. Last year, the total paid in dividends was \$43 per share, representing 172% upon the par value of its stock, which is \$25 per share; and over \$500,000 additional was carried to surplus account. In 1899, the dividends amounted to \$36 per share, or 144%. We are informed that the net earnings during the present year, have been at least equal to those of the preceding year.

The present Butte and Boston Company acquired the mines of a former company having a similar name, in 1897. The stock of the present Company, consisting of \$2,000,000 par value, was issued to the Stockholders of the old Company, who

were assessed \$10 per share, representing the present capital of \$2,000,000. In addition to this, the present Company assumed the indebtedness of the former company, amounting to \$1,500,000. It has constructed a new ~~smelting plant~~ and acquired some additional properties, and, at the end of 1900, it declared a dividend of \$1,000,000, or 50% out of its net profits, having also paid off a floating debt contracted prior to 1900, of about \$240,000.

Yours very truly,

P. J. McINTOSH.

The motion of Mr. Lindabury that the polls be opened for the purpose of receiving a vote by ballot upon the resolutions before the meeting was then put to a vote and carried.

Mr. Venner renewed his protest against receiving any votes upon the proxies to James Stillman, Robert Bacon, A. R. Flower and James Jourdan. Calvin O. Geer made a similar protest as also did Mr. Lamb as attorney for Carlotta E. Smith.

After all the Stockholders present in person or by proxy, had been given an opportunity to vote, and all who offered to do so had voted the Chairman having inquired if any other Stockholders desired to vote, and receiving no replies, announced that a motion to close the polls would be in order.

On Motion duly seconded, it was unanimously RESOLVED, that the polls be closed, and that the Inspectors announce the result of the vote.

Upon completing the count, the Inspectors submitted their report of the vote, showing that Share-

*Anaconda Copper Mining Co. et al.* 539

holders owning 595,530 shares of Stock, being more than two-thirds in interest of all the Stockholders of the Company, had voted in favor of the resolutions, and that Shareholders owning 304 shares had voted in opposition to resolutions I, II, & III, and that Shareholders owning 100 shares thereof had voted against resolution IV.

The Chairman thereupon declared all the said resolutions adopted.

It was moved and seconded that the report of the Inspectors be approved and spread upon the Minutes in full, which motion, after objection by Mr. Venner, was carried.

Following is a copy of the Inspectors' report, with their oaths attached:

AMALGAMATED COPPER COMPANY.

INSPECTORS' OR TELLERS' OATH.

State of New Jersey,

County of Hudson.

We, the undersigned, inspectors or tellers of Stockholders' votes, duly appointed to act at a special meeting of the Stockholders of the Amalgamated Copper Company, held at the office of said Company, No, 243 Washington Street, Jersey City, New Jersey, on the sixth day of June, 1901, at 10 o'clock in the forenoon, being severally duly sworn, do depose and say, and each for himself deposes and says: that he will faithfully execute the duties of inspector or teller at such meeting with strict impartiality, in accordance with the best of his ability.



Severally sworn to before me this sixth day of June, 1901.

ROBERT S. JORDAN,  
LE GRAND BOUKER.  
R. V. LINDABURY,

M. C. C. of N. J.

AMALGAMATED COPPER COMPANY.

INSPECTORS' OR TELLERS' CERTIFICATE.

We, the undersigned, appointed Inspectors or Tellers of Stockholders' votes at and for a special meeting of the Stockholders of the Amalgamated Copper Company, held at the office of the company, No. 243 Washington Street, Jersey City, New Jersey, on the 6th day of June, 1901, at 10 o'clock in the forenoon,

HEREBY CERTIFY AS FOLLOWS:—

I. That before entering upon the discharge of our duties, we subscribed the oath of office, which is hereto annexed.

II. That the following resolutions having been proposed and seconded, were submitted to a stock vote at such meeting.

WHEREAS, in the judgment of the Stockholders of this Company, the Capital Stocks of the Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company are reasonably worth at least \$80,000,000, now therefore, it is

I. RESOLVED, that the report of the Special Committee of the Directors be accepted and the recommendation therein contained be and the same is hereby adopted.

II. RESOLVED, that the Capital Stock of the Amalgamated Copper Company be increased from the present authorized amount thereof, to wit, \$75,000,000, consisting of 750,000 shares of the par value of \$100 each, to \$155,000,000 to consist of 1,550,000 shares, of the par value of \$100 each.

III. RESOLVED, that the Directors of this Company be and they are hereby authorized to acquire the shares of the Capital Stock of the Boston and Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, by issuing in exchange therefor, the full paid Capital Stock of this Company, at the rate of five and one-third shares of such stock for one share of the Capital Stock of the Boston and Montana Company and one and one-third shares of the Capital Stock of the Butte and Boston Company; such acquisition to be made, however, only in case at least a majority of the shares of the said Boston and Montana and Butte and Boston Companies can be so acquired.

IV. That the carrying out of the foregoing resolutions be subject to the order of the Chancellor of New Jersey, made on June 5th, 1901, under supplemental bill filed by Calvin O. Geer and another against this Company.

V. That the holders of 595,530 shares of stock of said Amalgamated Copper Company in person or by proxy, cast their votes at said meeting in favor of the adoption of resolutions 1, 2, 3, and

4; that only 304 shares thereof were cast against the adoption of said resolutions 1, 2 and 3; and that only 100 shares thereof were cast against the adoption of resolution # 4, and that we reported the said result of said vote to said meeting; and that the said resolutions were thereupon declared to be adopted.

IN WITNESS WHEREOF, we have made and signed this certificate, the 6th day of June, 1901.

ROBERT S. JORDAN,

LE GRAND BOUKER.

State of New Jersey,

County of Hudson, ss.

BE IT REMEMBERED, that on this sixth day of June, in the year of 1901, before me, the subscriber, personally appeared Robert S. Jordan and LeGrand Bouker, who I am satisfied are the persons named in and who executed the foregoing certificate. and I having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed the same as their voluntary act and deed for the uses and purposes therein expressed.

CHARLES L. CORBIN,

Master in Chancery of New Jersey.

ON Motion, duly seconded, it was

RESOLVED, that when this meeting adjourns it do adjourn to meet at the same place, on Tuesday, the 11th day of June, at 10 o'clock in the forenoon.

On motion, duly seconded, the meeting then adjourned.

W. H. CORBIN, Chairman.

GEORGE H. CHURCH, Secretary.

MR. WALSH: Here is the memorandum of the acquisition of the forty-two thousand shares of Anaconda stock. I offer in evidence the minutes of the meeting of date September 21st, 1899, appearing at pages 27 and 28 of the record.

To which offer of the complainants, the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Whereupon minutes of meeting of September 21, 1899, were offered and received in evidence and marked Complainants' Exhibit "G").

MR. WALSH: And also the minutes of the meeting of June 22nd, 1899, appearing at page 26, authorizing the President to purchase properties adjacent to those owned by the company.

To which offer the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

(Whereupon minutes of meeting of June 22, 1899, were offered and received in evidence and marked Complainants' Exhibit "H").

Said Exhibits "G" and "H" are in words and figures following, to-wit:—

**Exhibit G.**

A meeting of the Board of Directors of the Amalgamated Copper Company, was held at the New York office of the Company, No. 52 Broad-

way, New York, at 3 o'clock P. M., Thursday, September 21st, 1899, a quorum being present.

The minutes of the last meeting of the Board of Directors, held on June 22nd, 1899, were read and approved.

The minutes and votes of a meeting of the Executive Committee, held August 24th, 1899, were read, ratified and confirmed, and are as follows:—

“New York, August 24, 1899.

A meeting of the Executive Committee of the Amalgamated Copper Company, was held at two o'clock this day at the office of Mr. William Rockefeller, 26 Broadway, New York, a quorum being present.

IT WAS VOTED that the Treasurer be authorized to purchase at par, twenty-five (25) or such less number as he deems proper, of the one thousand dollar bonds of the Herald Publishing Company, publishing the Helena Herald, Helena, Montana.

IT WAS VOTED that in case a new hotel is built upon the property now owned by the Amalgamated Copper Company, and occupied by Marcus Daly and Company, as a bank, that the Amalgamated Copper Company, will take in stock of such new hotel, an amount equal to a fair valuation of this real estate which it will sell to the Hotel Company.

IT WAS VOTED that it is expedient to at once take up the question of building a refinery for the Amalgamated Copper Company, and the Vice-

President and Treasurer be authorized and instructed to procure forthwith all possible data for the erection of a new refinery in the vicinity of Buffalo or Chicago, wherever a large amount of water power can be economically purchased.

IT WAS VOTED that the economical administration of the Amalgamated Copper Company requires that so far as possible the number of companies, all of whose stock is owned by the Amalgamated Copper Company, should be reduced and therefore the President is authorized to forthwith take such action as he deems necessary for consolidating the various companies into one or more corporations.

IT WAS VOTED that the President of the Amalgamated Copper Company, be requested to see that so far as possible, all the funds held in New York by the various companies in which the Amalgamated Copper Company is interested, be deposited in the National City Bank of New York.

The meeting adjourned subject to the call of the Vice-President.

WM. G. ROCKEFELLER,

Secretary."

IT WAS VOTED to dispense with, at this meeting, the reading of the minutes of the meetings held April 27th, and the Secretary was instructed to send to each Director a copy of the minutes, in order that they might be examined at leisure and action taken on them at a future meeting.

Messrs. Daly and Burrage explained the steps

that were being taken in consolidating the various smaller companies.

IT WAS VOTED to amend Article 23 in the By-Laws of the Company, by adding thereto the following words:—

“Dividends shall be declared on the third Thursday or the next business day thereafter, of September, December, March and June, and paid on the third Monday or the next business day thereafter, of October, January, April and July.”

IT WAS VOTED that the sum of Fifty Thousand Dollars (\$50,000) is hereby set aside out of the net profits of the Company, as a Reserve Fund.

IT WAS VOTED that a quarterly dividend of \$1.50 per share, and also an extra dividend of 50 cents per share, be paid on Monday, October 16th, 1899, to the stockholders of record at twelve o'clock noon, Monday, October 2nd, 1899, and that the transfer books be closed from twelve o'clock noon, October 2nd, until ten o'clock A. M. Tuesday, October 17th, 1899.

IT WAS VOTED that the Treasurer be authorized to sell to D. J. Hennessy, for the sum of Three Hundred Thousand Dollars (\$300,000) cash twenty per cent (20%) of the Capital stock of the Hennessy Mercantile Company.

IT WAS VOTED that the Treasurer be authorized to purchase forty-two thousand (42,000) shares of the Capital Stock of the Anaconda Copper Mining Company, and also such additional shares from time to time as the Executive Com-

mittee may direct, at such prices as they approve.

The meeting adjourned subject to the call of the President.

WM. G. ROCKEFELLER,

Secretary.

**Exhibit H.**

A meeting of the Board of Directors of the Amalgamated Copper Company was held at the office of Mr. Wm. Rockefeller, 26 Broadway, New York, at 2:30 P. M. Thursday, June 22nd, 1899, a quorum being present.

The minutes of the last meeting of the Board of Directors, held on May 22nd, 1899, were read and approved.

IT WAS VOTED to dispense with, at this meeting, the reading of the minutes of the meeting held April 27th, and to have them read instead at some future meeting.

IT WAS VOTED that the Treasurer be authorized to borrow money from time to time, as approved by the Executive Committee.

IT WAS VOTED that the President be authorized to purchase from time to time, subject to the approval of the Executive Committee, any properties adjacent to ones owned by the Company.

IT WAS VOTED that the President be empowered to employ such consulting engineers as he may deem necessary.

IT WAS VOTED that the question of salaries be referred to the Executive Committee with power.

The President Mr. Marcus Daly, then read a re-



port giving full details of the present condition of the Company, and its estimated earning ability.

The meeting adjourned subject to the call of the President.

WM. G. ROCKEFELLER,

Secretary.

The first that I have here of these companies in which we did acquire stock is the United Metal Selling, and we had all of that. The next is the Inspiration, 150,000. The properties of the Inspiration Company are near Globe, Arizona. The outstanding total is 722,945 shares at twenty dollars each. This is the old Green. I think it has been changed. The capital stock was two million five hundred shares. No, I would not say that it has been reduced to two million; two million five hundred shares at twenty dollars a share, increased to \$100.00 par. That would cut that down to five hundred thousand shares. I know this: Instead of 154,000 shares, we now have 30,800; that is to say we bought 154,000 shares, but has been reduced on a basis of one to five. The par value of the capital stock must have been increased, so that our present holdings are 30,800 shares, on the same capitalization. 500,000 shares at \$100 a share. The next is the Butte Coalition. That was paid for in this period, and that has been wiped out, but during its life we bought fifty thousand shares for \$825,000. That has been dissolved, you know, but it was a charge in the period. When I mentioned the Butte Consolidated I intended to say Butte Coalition Mining

Company. We have no Butte Consolidated Company. I meant Butte Coalition. The next item is B. & B. bonds, 180,000. I don't think that was the total issue. This was just a purchase afterwards. If they had any bond issue at all, it would be more than \$180,000. The next is the Butte Water Company, \$39,000. That represents 2061 out of the total of 40,000. The rest was for Big Blackfoot Timber Lands, 2,881,748, and the Washoe Smelter and the Clark properties. The Greene Cananea is engaged in copper mining too. When the properties of these various companies were transferred to the Anaconda Copper Mining Company about 1910, I think the Amalgamated obtained stock in the Anaconda Company for the stock that is held in these various companies. I also think for its stock in the Butte Coalition Company it received in exchange Anaconda Copper Mining Company stock, the stock of the Anaconda Mining Company meanwhile having been increased from 30,000,000 to 150,000,000. I don't know to whom the title to the Black Foot lands went. I cannot tell you that. I don't know whether it went to the Amalgamated Copper Company. The title is in the Big Blackfoot Milling Company, and we have the stock of that company exchanged for Anaconda stock; we have Anaconda stock exchanged for that stock. The Big Black Foot Milling Company went out of existence likewise. The way it was finally settled was that these lands were really purchased with Anaconda Copper Company stock, that is to say, stock of the Ana-

conda Copper Mining Company was issued for these lands, and the Amalgamated became the owner of that additional Anaconda stock. The title to the Clark properties passed to the Anaconda Copper Mining Company and then the Amalgamated got Anaconda stock for it. The total Amalgamated capitalization was 155,000,000, not all issued. 153,887,900 had been issued, and the excess above that amount and between that amount and the total investment of 184,000,000, represents accumulations from time to time. There is no extra stock issued for that difference. Turning to the record for the 1905 with reference to the adjustment of the Heinze litigation or the acquisition of the Heinze properties, it is only referred to in the report of stockholders. That is all so far. It was a circular that was sent to stockholders; that is just a copy in here, appearing in the minutes of the annual stockholders' meeting. I think I have a printed copy of that circular. I think I can get one for each year. This is the report you refer to. This was a pamphlet that was issued for two or three years. I will get all of them from 1905. It will take some time to get them. The first reference I find to it is under this date of June 5, 1905, that is, to the subject inquired about. I do not think it speaks of Heinze at all; it just says "litigation." I will provide you with a copy of the report which is copied at length in this record if I can find it. Here it is in the meeting of February 15, 1905.

MR. WALSH: I offer the proceedings of the

Board of Directors of date February 5, 1906, appearing at pages 130 to 135 inclusive.

To which offer in evidence of said proceedings, the defendants then and there objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

(Whereupon proceedings of Board of Directors of February 5, 1906, offered and received in evidence and marked Complainants' Exhibit "I," and is in the words and figures following, to-wit:)

**Exhibit I.**

A meeting of the Board of Directors of the Amalgamated Copper Company was held pursuant to due notice at the office of the Company, No. 42 Broadway, New York, on Thursday, February 15th, 1906, at which a quorum was present.

IT WAS RESOLVED: to dispense at this meeting with the reading of the minutes of the last meeting of the Board of Directors held on Thursday, January 18th, 1906.

A letter addressed to the Board of Directors of The Company, from Mr. T. F. Cole, was read to the Board as follows:

New York, February 15th, 1906.

To the Board of Directors of the Amalgamated Copper Company.

Gentlemen:—

The following named corporations:

Montana Ore Purchasing Company,

Minnie Healy Mining Company,

Nipper Consolidated Copper Company,  
Belmont Mining Company.

Corra Rock Island Mining Company,

Hypoeka Mining Company.

Guardian Copper Company,

Johnstown Mining Company,

have also assigned to me claims and choses in action against your company by instruments of assignment in the form of the paper hereto attached marked Exhibit B.

John MacGinniss has also assigned claims by an instrument in the form of Exhibit C hereto attached.

Believing that you will recognize the importance and desirability of settling, compromising and disposing of matters in controversy between your company and my assignors, I make you the following proposition:

If you will give a release and discharge of all claims and demands and all suits, actions and other legal proceedings thereon, now made or which might be made by you or in your behalf and a release and discharge from all persons representing or acting in behalf of your company in the assertion of claims and demands against any and all of the corporations and natural persons above named, on account of any trespasses or wrongs committed against your company or upon its properties by the corporations and natural persons above named, and all other claims and demands against said corporations and persons of every kind and character, excepting those aris-

ing out of the sale of goods, wares and merchandise, which your company has or might assert against any of the said corporations, their officers and agents and the natural persons above named, and also from any claim or demand now being asserted in any action or legal proceeding pending anywhere in any Court, State or Federal or which might be hereafter asserted because of any bond or undertaking given in favor of your corporations by or in behalf of any of the corporations above named, or by or in behalf of any of the natural persons above named, I will release and discharge you from any and all liabilities to any and all of the corporations and natural persons above named and to myself as assignee from and of every claim, and demand described in the instruments of assignment aforesaid.

(Signed) T. F. COLE.

Mr. A. J. Shores, counsel of the Company was present at the meeting and read to the meeting, the following letter signed by himself:

February 15, 1906.

To the Board of Directors of the Amalgamated Copper Company.

Gentlemen:—

At your request I have read the proposition today submitted to the Board by Mr. T. F. Cole of Duluth, Minn., wherein he undertakes to release and discharge the Amalgamated Copper Company from claims and demands asserted or which might be asserted by the Montana Ore Purchasing Company and other corporations and persons

named against the company, if the Amalgamated Copper Company will release such corporations and persons from claims and demands such as he specified.

The Amalgamated Copper Company has no litigation pending in the State of Montana except certain suits wherein shareholders of the Parrot Silver and Copper Mining Company and of the Boston & Montana Consolidated Copper and Silver Mining Company seek to prevent payment of dividends to the Amalgamated Copper Company upon stock held by it in those companies and to prevent the Amalgamated Copper Company from exercising any right as such shareholder.

The legal issues involved in these suits have been decided in favor of the Amalgamated Copper Company but the suits are still pending and it is of course, to have them stricken from the calendar and finally disposed of.

The acceptance of the proposition of Mr. Cole means simply that the Amalgamated Copper Company will waive any claim to costs or damages which it might assert on account of the institution of these suits.

The purchase by Mr. Cole of the properties of the several Heinze companies and his effort to procure a settlement and adjustment of controversies between those companies and the subsidiary companies of the Amalgamated Copper Company cannot, I think be otherwise than extremely beneficial to the Amalgamated Copper Company itself. After examining the proceedings

of the various corporations which have resulted in the assignment to Mr. Cole of claims and demands against the Amalgamated Copper Company and its subsidiary companies, and being satisfied that he is in a position legally to discharge all such claims as he refers to in his written proposition, I believe with other attorneys for the company with whom I have consulted, that his proposition ought to be accepted.

Mr. Cole has also arranged for a dismissal of other shareholders suits pending or which have at some time been brought against the Amalgamated Copper Company in the Heinze interests in Massachusetts, New York and elsewhere on condition that the Amalgamated Copper Company consents to the dismissal of such actions. Whenever Mr. Cole shall find himself able to procure dismissal of such suits I think that the Amalgamated Copper Company should consent to a dismissal of the same and waive any claims for costs or damages from the institution of the same.

Respectfully submitted,

(Sg) A. J. SHORES."

The following preambles and resolutions were offered by Mr. Church and seconded by Mr. Judson and were unanimously adopted:

WHEREAS, this Board is advised by counsel that the following named corporations and persons, to-wit:

Montana Ore Purchasing Company,  
Minnie Healy Mining Company,  
Nipper Consolidated Copper Company.



Corra Rock Island Mining Company,  
Belmont Mining Company,  
Guardian Copper Company,  
Johnstown Mining Company,  
F. Augustus Heinze,  
Otto C. Heinze,  
Arthur P. Heinze,  
John MacGinniss,  
Stanley Gifford,  
Max H. Schultze,

have made lawful and valid assignments to T. F. Cole of the claims, demands and choses in action referred to in the proposition of the said T. F. Cole herein mentioned, and

WHEREAS, T. F. Cole has submitted to the Board, a proposition in writing to compromise and release the claims so assigned to him in consideration of the release and discharge by this Company of such claims against his assignors as described in his written proposition now on file with the Secretary of this Company, and

WHEREAS, the Board has duly considered the advisability of accepting such proposition after consultation with the attorneys and engineers of the company and others having knowledge of the conditions,

NOW THEREFORE BE IT RESOLVED: that the proposition of T. F. Cole be accepted, and the President or Vice-President and other proper officers and attorneys of the company are directed to take all steps necessary to effect a settlement of all matters in controversy referred to

in the proposition of T. F. Cole including the execution of all necessary or proper instruments of release and discharge and the execution of all instruments necessary to the dismissal of suits, as follows:

EXHIBIT A.

KNOW ALL MEN BY THESE PRESENTS: that the Belmont Mining Company, a corporation organized under the laws of the State of Montana, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration to it in hand paid, does hereby sell, assign, transfer and set over unto his heirs and assigns, all claims and demands now made or which might be made or claimed by this corporation, the Belmont Mining Company, against any or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company.

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

and all claims and demands which this corporation makes or might make against any and all other persons and corporations, whatsoever, on account of any trespasses or wrongs heretofore committed or claimed to have been committed to or upon any of the real or personal properties

of this corporation, and also all claims and demands of every kind, character and description, existing in favor of this corporation against any of the said other corporations above named, their predecessors in title or persons representing them in such litigation, excepting such claims and demands arising out of the sales of goods, wares and merchandise; also all and every claim and demand now being asserted by this corporation or in its behalf, in any action or legal proceeding pending anywhere in any court against any of such corporations above named, as well as their predecessors in title and persons representing them in such litigation, and any claim or demand which might hereafter be asserted because of any bond or undertaking given by or in behalf of any one of the said corporations above named or their predecessors in title or persons representing them in such litigation.

All such claims and demands in litigation are hereby assigned, transferred and set over by this corporation and are warranted and represented to be free from any lien or claim in behalf of any attorneys or others, and this corporation agrees to consent at any time when requested, to such substitution of parties and attorneys in such litigation as the said purchaser, his heirs or assigns may request, and as he or his said heirs or assigns may be entitled to by virtue of this settlement.

This corporation represents that it has not previously assigned or transferred to any other person or corporation any claims or demands against

any of the corporations herein especially named and it promises and agrees to protect, indemnify and save harmless each of the above named corporations, from all claims and demands of the character herein specified which may at any time be made by any person or corporation as assignee of this corporation upon any assignment heretofore made.

IN TESTIMONY WHEREOF, the said Belmont Mining Company has caused these presents to be duly executed by its officers, this                      day  
of                      1906.

BELMONT MINING COMPANY,

By

President.

Attest:

Secretary.

EXHIBIT B.

KNOW ALL MEN BY THESE PRESENTS:  
that F. Aug. Heinze, of the City of Butte, State of Montana, and Arthur P. Heinze, Otto C. Heinze, Stanley Gifford and Max H. Schultze, all of the City of New York, State of New York, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration, to them in hand paid, do hereby sell, assign, transfer and set over unto  
his heirs, and assigns, all  
claims and demands now made or which might be made or claimed by them or either or any of them against any or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company,

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

and all claims and demands which they or any or either of them make or might make against any and all other persons and corporations whatsoever, on account of any trespasses or wrongs heretofore committed or claimed to have been committed to or upon any of the real or personal property of them or any of them; also every claim and demand now being asserted by them or any or either of them, or in their behalf, or in behalf of any or either of them, in any action or legal proceeding pending anywhere in any court against any of such corporations above named, as well as their predecessors in title and persons representing them in such litigation, and any claim or demand which might hereafter be asserted because of any bond or undertaking given by or in behalf of any one of the corporations above named, or their predecessors in title or persons representing them in such litigation.

IN WITNESS WHEREOF, the said F. Aug. Heinze, Arthur P. Heinze, Otto C. Heinze, Stanley Gifford and Max H. Schultze have hereunto set their hands and seals this                      day of January, 1906.

.....(SEAL)

.....(SEAL)

.....(SEAL)

.....(SEAL)

.....(SEAL)

**EXHIBIT C.**

**KNOW ALL MEN BY THESE PRESENTS:**  
that John MacGinniss of the City of Butte, State of Montana, in consideration of the sum of One (\$1.00) Dollar and other valuable consideration to him in hand paid, the receipt whereof is hereby acknowledged, sells, assigns, transfers and sets over and does hereby sell, assign, transfer and set over unto THOMAS F. COLE of the City of Duluth, and State of Minnesota, his heirs and assigns, all claims, demands, cause or causes of action, and rights of action, whether now the subject of litigation or not, which he and all persons representing him in the assertion of such claims, has, has had or might have or assert against any or either or all of the following named corporations, to-wit:

Boston and Montana Consolidated Copper and Silver Mining Company,

Butte and Boston Consolidated Mining Company,

Anaconda Copper Mining Company,

Parrot Silver and Copper Company,

Washoe Copper Company,

Trenton Mining and Development Company,

Amalgamated Copper Company,

their officers and agents, on account of any tres-

passes to mining or other real property in the County of Silver Bow, State of Montana, or the Mining, removal or taking away any ores, metals or minerals thereon or therefrom or any other conversion of or tresspasses upon said lands or ores, metals or minerals, heretofore at any time done or committed by said corporations, or any or either of them, their officers or agents, and generally all claims, demands and rights of action, whether now the subject of litigation or not, on account of mining operations which he has against said corporations or any of them.

Also all claims and demands and rights of action on account of trespasses by any corporations or natural persons whatsoever upon any ore bodies or other real property now or heretofore owned by him within said County of Silver Bow and all claims for the mining, removal or taking away ores, metals or minerals therefrom or thereon whether now the subject of litigation or not.

Also all actions, suits or other legal or equitable proceedings pending anywhere in any court against said corporations or any or either of them upon the above mentioned claims or demands or any or either of them.

Also any and all claims and demands which now or hereafter might be asserted because of any bond or undertaking given by or in behalf of any one of the said corporations or their predecessors in title or persons representing them in the above mentioned suits or actions or either of them.

This instrument shall not be construed to transfer or affect any rights as a stockholder of or in the Boston and Montana Consolidated Copper and Silver Mining Company or any action or suits or other legal or equitable proceedings upon such stockholders rights.

IN WITNESS WHEREOF, the said John MacGinniss has hereunto set his hand and seal this 30th day of January, 1906.

JOHN MacGINNISS, (SEAL)

WITNESS:

SANFORD ROBINSON.

On motion the meeting then adjourned subject to the call of the president.

A. H. MELIN,

Secretary.

Litigation is spoken of in the next report, but you will get that in the report for 1906. The report I refer to now is the same as 1905 that you are going to be furnished a copy of. At the annual stockholders' meeting in 1906, a similar statement was incorporated in the record. I will furnish you with a copy of that statement. I am quite sure there will be no other reference back of it, there is no use going further, because the thing was settled at that time, you know, in 1907. I am quite sure there is no reference to the adjustment and settlement of the Heinze litigation or the acquisition of the Heinze properties except as I have already spoken of.

Q. Now, I wish you would turn to the record, if there is any record of the acquisition of the 50,-



000 shares of Butte Coalition stock. (Witness complies).

MR. WALSH: I will offer that record in evidence the record of the meeting of the Directors of the Company of date November 23rd, 1909, appearing at page 188 of the book of minutes.

To which offer, and the receipt of the same in evidence, the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling the defendants excepted.

(Whereupon record of meeting of directors of November 23, 1909, was offered and received in evidence and marked Complainants Exhibit "J," and is in the words and figures following, to-wit):

**Exhibit J.**

A Special Meeting of the Board of Directors of the Amalgamated Copper Company was held at the office of the Company, No. 42, Broadway, New York City, on Tuesday, November 23rd, 1909 at which a quorum was present.

The Secretary read the minutes of the regular meeting held on October 21st, 1909, which on motion duly seconded, were approved.

The following resolution was introduced by Mr. Thayer, duly seconded by Mr. Burrage:

WHEREAS the option which this Company had in 1906 to purchase a substantial block of the stock of the Butte Coalition Mining Company at cost, lapsed by reason of the inability of this Com-

pany to make the said purchase, and

WHEREAS, a large block of the said stock, consisting of 50,000 shares, has been recently offered to this Company at about \$16.50 per share as against the present market value of \$31.00 or \$32.00 per share,

RESOLVED: That this Company now purchase 50,000 shares of the capital stock of the Butte Coalition Mining Company for the sum of \$824,889.00.

It having been suggested that the vote of the Board of Directors upon the foregoing resolution should be polled, the same was accordingly done, and the following directors recorded their vote in favor of the foregoing resolution:

General James Jourdan

Mr. A. C. Burrage

" John D. Ryan

" J. Horace Harding.

" B. B. Thayer

" H. H. Rogers

" John Bushnell.

The Chairman thereupon declared such resolution duly adopted.

There being no further business before the Board, on motion duly seconded, the meeting adjourned, subject to the call of the President.

A. H. MELIN,

Secretary.

This record speaks of an option which the company had in 1906 to buy certain stock of the Butte Coalition. I don't think it was a written option.

I never saw it. I should say it was fifty thousand shares. I don't know by whom the option was given. I was secretary at the time. I cannot recall that now. You will notice that it was purchased for sixteen and a half at a time when the price was thirty-one at the time that that was exercised. I don't know from whom it was bought, but I think Mr. Rogers; I won't be sure about that. No, my books would not show. It would probably show who the check was made out to. I could very readily determine from whom this stock was bought. This system of making reports similar to these started I think in 1905. I don't know whether there was one issued in 1904 or not. There are the reports from 1905 to 1909 inclusive (handing reports to counsel). Here are the 1910, 1911 and 1912 (handing reports to counsel).

MR. WALSH: Just mark these in order.

Each of said reports being offered in evidence by the complainants, the defendants objected to their, and each of them, being received in evidence, upon the ground that the same was incompetent, irrelevant and immaterial, which said objection was overruled by the court, to which ruling of the court the defendants excepted.

(Reports dated April 30, 1905, 1906, 1907, 1908 and 1909, marked respectively Complainants' Exhibits K, L, M, N, and O, October 8th, 1913).

I think it likely was 1905 that we began making annual reports, and these have been given to the public,—to the stockholders of record. Prior

to that time, the record does not show any report made to stockholders. I do not remember of any advertisement put out by the City National Bank, or anything put out by the company at the time of its organization in relation to its stock. If I can I will get a copy of the statement filed with the Stock Exchange, whenever it was filed. My records will show, only as in these statements here the production of each one of the constituent companies of the Amalgamated from time to time. That is the only record you will find of the production in the reports, and nothing in the minutes that I remember. My books would not show the production of the Anaconda mines; not an entry. The Amalgamated Company is only a holding company. It does not keep the record of so important a matter as the production of the companies from time to time. We get information with respect to these matters that we incorporate in this annual report from the subsidiary companies. We send around to the subsidiary companies and get information just for the report purposes, showing the condition. This is a general report of conditions with the auditors' accounts attached. That is all. It goes into the price of copper, of course, and mining in a way, what they receive for their copper and silver. I have not read these for a long time, but I know that is what they do, as I recollect it, and in the report since 1905 we have incorporated the Anaconda report in with the Amalgamated, showing all of the details, operations at the mines, smel-

ters, lumber, timber, coal and so forth. That has been in all of the reports since, all details, but it is just the Anaconda report put into an Amalgamated cover since the consolidation. We have the copper hand book. As to the annual production of each of the constituent companies of the Amalgamated, from the time it was organized, the Anaconda Company would have to furnish that I should think they would have it. I don't know. The Engineering & Mining Journal is the standard work that gives the price of copper from time to time. That is the authority. Everything is settled on their figures. The Amalgamated acquired the stock of the United Metal Selling Company in March, 1911. It had for a long time prior thereto been the selling agency for the various constituent companies, but not the Amalgamated. It had been the selling agency for the subsidiary companies. I cannot tell you without looking it up where these various companies kept their supply of copper. I suppose at Perth Amboy and at Great Falls. They have a warehouse that stores all the copper that they make there in between sales; they sell most of their product; it goes west from there I understand. I think their product goes west from Great Falls. It fills the orders from the western coast. I should think that whatever stocks the other companies had on hand were ordinarily held at Perth Amboy by the Raritan Copper Works which is a subsidiary, or was, of the United Metal Selling Company, I think. It has a warehouse there. I think the books of the United Metal Sell-

ing Company would tell about that matter. I don't know anything about their books. Their office is in this building on the 9th floor. As to the amount of copper which each of the constituent companies of the Amalgamated had on hand since its organization, there is the first statement. That was what went out first for the unlisted. It was a curb stock before that time, and here is the later one (indicating). That shows just exactly what you were asking for yesterday, I think. (Producing paper).

MR. WALSH: We offer this paper in evidence. (Whereupon paper was offered and received in evidence, marked Complainants' Exhibit "P," and is in words and figures following, to-wit):

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which objection the defendants then and there excepted.

**Complainants' Exhibit P.**

**DEPARTMENT OF UNLISTED SECURITIES.**

**COMMITTEE ON UNLISTED SECURITIES.**

**AMALGAMATED COPPER COMPANY.**

Incorporated April 27, 1899, under the Laws of  
the State of New Jersey.

Authorized Capital Stock, all outstanding,  
\$75,000,000.

No personal liability. Par value of shares,  
\$100 each.

Registrar, Central Trust Company, New York.  
Transfer Agent, National City Bank, New York,

and Company's office, Jersey City.

The Company has no bonded debt. Five consecutive quarterly dividends of Two per Cent. each beginning in October, 1899, have been paid.

The Stocks of the following Companies are owned wholly (excepting organizers' shares) by this Company:

Capital Stock.

Washoe Copper Company, Butte, Mon-	
tana .....	\$5,000,000
Colorado Smelting & Mining Co.,	
Butte, Montana .....	2,500,000
Diamond Coal & Coke Co., Diamond-	
ville, Wy. ....	1,500,000
Big Blackfoot Milling Co., Bonner,	
Montana .....	700,000

A majority of the Stock of the following Companies are owned by this Company:

Capital Stock.

Anaconda Copper Mining Co., Butte,	
Mont. ....	\$30,000,000
Parrot Silver & Copper Co., Butte,	
Mont. ....	2,298,500
Hennessy Mercantile Company, Butte	
and Anaconda, Montana.....	1,500,000

This Company is a large owner of the Stock of the Boston & Montana Consolidated Copper & Silver Mining Company, located at Butte, Montana.

There is no bonded debt on any of the above named Companies.

EXTRACTS FROM CERTIFICATE OF INCORPORATION.



Third. The objects for which, and for any of which the Corporation is formed, are to do any or all of the things, herein set forth, to the same extent as natural persons might or could do, and in any part of the world, viz.:

(1.) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging, and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals and minerals, and in the products and by-products thereof of every kind and description, and by whatsoever process the same can be or may hereafter be produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims, and in the above specified products, and to conduct all business appurtenant thereto.

(2.) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, concentrating, converting, smelting, treating, buying, selling, exchanging, manufacturing, and dealing in the above specified lands, properties, rights, products, and all materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants or consignees, any other business which in the judgment of Company may be conveniently conducted in conjunction with any of the matters aforesaid.



(6.) To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the Company to remain or be vested or registered in the name of or carried on by any other Company or Companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents or nominees of this Company, or upon any other terms or conditions which the Board of Directors may consider for the benefit of this Company, and to manage the affairs or to take over and carry on the business of such Company or Companies, so formed or to be formed.

(7.) To acquire and carry on all or any part of the business or property of any Company engaged in a business similar to that authorized to be conducted by the Company, and to undertake in conjunction therewith any liabilities of any persons, firms, association or company possessed of property suitable for any of the purposes of this Company.

(8.) To purchase, subscribe for, or otherwise acquire and to hold the shares, stocks or obligations of any Company organized under the laws of this State, or of any other State, or of any territory or colony of the United States, or of any foreign country.

(12.) To carry out all or any part of the foregoing objects as principals or agents or in conjunction with any other person, firm, association or Company, and in any part of the world.

EXTRACTS FROM THE BY-LAWS.

Directors.

3. The property and business of the Corporation shall be managed by a Board of Directors, eight in number; they shall be chosen from the stockholders, and shall hold office for one year, and until others are elected and qualified in their stead.

8. The annual meeting of the stockholders, after the year 1899, shall be held on the first Monday of June in each year, at Jersey City, N. J., at 10 o'clock, A. M., when they shall elect, by a plurality vote, the aforesaid Directors to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

Officers.

10. At the first meeting after the election of Directors, when there shall be a quorum, the Board of Directors shall elect, by ballot, a President and Vice-President from their own number who shall hold office for one year and until their successors are elected and qualify.

Standing Committee.

16. There may be an executive committee of three Directors appointed by the Board, who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. The Pres-

ident shall also ex-officio be a member of the Executive Committee.

#### Dividends.

23. Before payment of any dividends or making of distribution of profits, there shall be set aside out of the net profits of the Company such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for any such other purpose as the Directors shall think conducive to the interests of the Company.

Dividends shall be declared on the third Thursday, or the next business day thereafter, of September, December, March and June, and paid on the last Monday, or the next business day thereafter, of October, January, April and July.

#### Alterations of By-Laws.

26. The Directors may at any regular or at any special meeting alter or amend these By-Laws.

**OFFICERS.**—Henry H. Rogers, Vice-President; Wm. G. Rockefeller, Secretary and Treasurer; Percival J. McIntosh, Assistant Treasurer.

**DIRECTORS.**—Henry H. Rogers, Wm. G. Rockefeller, James Stillman, Albert C. Burrage, F. P. Olcott, Robert Bacon, A. R. Flower.

November 23, 1900.

\$75,000,000 Capital Stock admitted to quotation in the Unlisted Department this day.

H. K. POMROY, Chairman.

WM. McCLURE, Secretary

Exhibit "P" is a statement that was furnished the New York Stock Exchange at the time it was first put in the unlisted list, on the 23rd of November, 1900. No, that is not furnished for use on the curb. This is the time it went on to the New York Stock Exchange as an unlisted stock.

Exhibit "Q" is the statement furnished the Stock Exchange on March 9, 1910, when it went on the listed stock.

Exhibit "R" is the copy of the report of the Amalgamated Copper Company for 1910, which I handed you yesterday, it is for the year ending April 30, 1910.

MR. WALSH: I want to offer in evidence the report appearing in this volume at pages 3, 4 and 5. (The report appearing at pages 3, 4 and 5, is as follows: [Here insert.] )

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants excepted.

At that I began accompanying the report of the Amalgamated Company with reports of the various constituent companies.

MR. WALSH: From the accompanying report of the Boston and Montana Consolidated Copper and Silver Mining Company, accompanying the report offered in evidence. I offer in evidence the following in relation to the Badger State Shaft: "This shaft had, on December 31st, 1909, reached a depth of 1548 feet, and has been sunk in the

northwestern portion of the Butte Camp, in order to develop the Badger State and Auraria claims owned by this company. The ore bodies have no connection whatsoever with those that have been developed by the shafts already mentioned, but the work thus far done, gives promise of very gratifying results. For the purpose of locating veins, a station was cut on the two hundred foot level, and another one on the thirteen hundred foot level, and cross cuts started. Veins carrying comparatively little ore, on account of their proximity to surface have been opened on the two hundred foot level, while on the thirteen hundred foot level, the same veins carrying a very good grade of ore have been encountered. Drifts have been turned upon these levels, and exploration work upon the same is in progress now."

I should say "The shafts already mentioned" mentioned in the foregoing excerpt referred to the West Colusa, the East Colusa, the Pennsylvania the Leonard No. 1 and Leonard No. 2, and Mountain View shafts. Exhibit "S" is the copy of the report for the year ending March 30, 1911, which I handed you yesterday. At that time our fiscal year ended the 30th of April, so that the report for 1910 would be for the year ending April 30, 1910.

MR. WALSH: Now I offer the report of the Amalgamated Copper Company, appearing therein at pages 5, 6, 7, 8 and 9, as follows: (Here insert said pages 5, 6, 7, 8 and 9), also the report to the shareholders of the Anaconda Copper Mining Company, appearing in the same printed book,

pages 14 and 15, as follows: (Here insert said pages 14 and 15), also the following from the report therein, concerning the Boston and Montana Department, under the head of "Badger State Shaft;":

To which offer the defendants then and there objected, for the reasons that the same was incompetent, irrelevant and immaterial; said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"This shaft is situated in an entirely different section of the Butte Camp from that in which are located the shafts which have been reported under the heading of the Boston and Montana Department; as it lies in a northwesterly direction from them, and distant several thousand feet. It is now eighteen hundred feet in depth, two hundred and eighty-three feet having been sunk during the year. Stations have been established at the thirteen hundred, sixteen hundred and eighteen hundred foot levels, and several veins of great promise have been developed, showing good widths, and a grade of ore higher in copper values, and carrying an average silver value, greater than that of any of the other mines. There is a general opinion among those familiar with this property, and its development, that it is destined to become one of the great mines of the district. Development work is being pushed with vigor."

Exhibit "T" is a copy of the printed report of the Amalgamated Copper Company for the year

ending April 30, 1912, which I handed you yesterday.

MR. WALSH: I offer in evidence the report of that Company, appearing therein at page 5, 6 and 7 as follows: (Here insert said pages 5, 6 and 7), also the following under the heading of Boston and Montana Department, in relation to the Badger State Shaft:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial; objection overruled by the court, to which ruling of the court the defendants then and there excepted.

"This shaft was not sunk during the year but extensive development work was carried on, resulting most satisfactorily, and has developed the veins to a depth of eighteen hundred feet. There are but four levels in the mine, the eleven hundred, the thirteen hundred, sixteen hundred and eighteen hundred, and the greatest values shown are on the two lower levels. The shaft will be sunk an additional two hundred feet as soon as an auxiliary engine has been installed."

Complainants' exhibit "U" is a copy of the printed report of the Amalgamated Copper Company for the eight months ending December 31, 1912, which I handed you yesterday.

MR. WALSH: I offer from this, the report to the shareholders of the Amalgamated Copper Company, appearing at pages 4, 5, 6 and 7, as follows: (Here insert said pages 4, 5, 6 and 7), also the following from the accompanying report to



the shareholders of the Anaconda Copper Mining Company, under the head of "Development" at page 13:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"An auxiliary shaft to the Badger State Mine, known as the Emily Shaft, located on the Emily claim, which had originally been sunk to a depth of four hundred feet, was sunk an additional depth of five hundred and seventeen feet during the year, and connection made with the one thousand foot level of the Badger State mine. Development work has been done on the 1100, 1300, 1400, 1600 and 1800, foot levels, of the Badger State Mine, with very gratifying results. The mine made an average daily output of five hundred and fifty tons of ore throughout the year.

Sinking in the mainshaft below the eighteen hundred foot level was started on December 19th.

Also the following appearing on the same page, under the same heading:

To which offer the defendants objected, upon the ground that the same was incompetent, irrelevant and immaterial, which objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

"Many years ago, the ground adjacent to the Moose shaft, lying in a westerly direction from the Badger State Mine, was worked to a depth of five



hundred feet with fair success for ores, carrying silver values only. During the year 1913, it is proposed to start sinking the Moose shaft to a depth of eighteen hundred feet, and to prospect the veins at greater depth. This shaft can also eventually be connected with the Badger State workings, and will be of great assistance in perfecting ventilation."

Complainants' exhibit "AA" is a statement of copper on hand in East and Great Falls, and in transit on December 31, 1909. The last item shown under the head "Washoe", is mostly custom ore, that is true of all the others.

MR. WALSH: We offer this in evidence.

Exhibit "BB" is a similar statement for the six months ending June 30, 1909.

MR. WALSH: We offer this in evidence.

Exhibit "CC" is a similar statement for the six months ending December 31, 1908.

MR. WALSH: We offer this in evidence.

Exhibit "DD" is a similar statement for the six months ending June 30, 1908.

MR. WALSH: We offer this in evidence.

Exhibit "EE" is a similar statement for the six months ending December 31, 1907.

MR. WALSH: We offer this in evidence.

Exhibit "FF" is a similar statement for the six months ending June 30, 1907.

MR. WALSH: We offer this in evidence.

Exhibit "GG" is a similar statement for the six months ending December 31, 1906.

MR. WALSH: We offer this in evidence.

Exhibit "HH" is a similar statement for the six months ending June 30, 1906.

MR. WALSH: We offer this in evidence.

Exhibit "II" is a similar statement for the six months ending December 31, 1905.

MR. WALSH: We offer this in evidence.

Exhibit "JJ" is a similar statement for the six months ending June 30, 1905.

Each of the foregoing offers, namely, the offer of complainants' exhibits AA, BB, CC, DD, EE, FF, GG, HH, II and JJ, were separately objected to and their receipt in evidence objected to, by the defendants, upon the ground that they, and each of them, were incompetent, irrelevant and immaterial, which several objections were overruled by the court, to which several rulings of the court the defendant's excepted.

MR. WALSH: We offer this in evidence.

MR. GARVER: All these are objected to as irrelevant, incompetent and immaterial.

This is as far back as I have records now, when I complete it I will hand it to the Commissioner when I sign my testimony.

(Witness Excused.)

(The Exhibits referred to in the testimony of witness Melin are respectively, as follows:)

**Complainants' Exhibit K.**

At a meeting of the Board of Directors of the Amalgamated Copper Company in June, 1905, the Secretary was authorized to issue to the Stockholders the following statement, together with a

condensed Balance Sheet of the Company as of April 29, 1905:

The Amlagamated Copper Company was organized in April, 1899, with a Capital Stock of \$75,000,000. For three months prior thereto, copper was selling at between sixteen and seventeen cents a pound, and there was no accumulation of stocks in the hands of the producers. Scarcely any new discoveries of copper had been made in the United States for several years, and the uses of the metal were so rapidly increasing, especially in the electrical field, that the most experienced observers of the market were of the opinion, that the price of the metal would not again fall under fourteen cents a pound, until new and extensive sources of supply were developed, of which there was then no present indication. In this connection, the following statement from "The Mineral Industry" for 1899 is of interest;

"The year 1898 closed with a firm tendency at practically the highest prices of that period, but it was not until early in 1899, that consumption became manifestly larger than production, and stocks already small were drawn upon to such a degree, that an upward movement in values took place. Whatever the future may bring forth, it may be stated confidently that consumption is likely to remain satisfactory."

Mr. Marcus Daly was the first President of the Company; and it was confidently expected that it would have the benefit of his large experience and of his intimate knowledge of the copper situation

in Montana. But, unfortunately, his health became seriously impaired, preventing him from taking any active part in the management of the Company and his death occurred in the second year of the Company's existence.

During the last eight months of the year 1899 and throughout 1900, the Company was able to sell its product at over sixteen cents per pound. Dividends at the rate of one and one-half per cent, regular and one-half per cent. extra, were paid quarterly from October, 1899, to October, 1901, when the rate was made one and one-half per cent. for the quarter. In January, 1902, a dividend of one per cent. for the previous quarter was paid, and from May, 1902, to January, 1905, quarterly dividends of one-half of one per cent. were paid. In January, 1905, the dividend rate was increased to one per cent. The average rate of dividend for the total period, from October, 1899, to June, 1905, has been three and seven-eighths per cent. per annum.

In 1901, the authorized capital stock of the Company was increased to \$155,000,000, and the new stock was issued for that of the Boston & Montana and the Butte & Boston Companies. This has proved to be a very advantageous investment.

In 1901 and 1902, in order to reduce to a minimum the cost of production, a new concentrating and smelting plant was erected at Anaconda, at a cost of over \$9,000,000. This is now the most complete and up-to-date copper reduction works in existence, and has been the means of effecting

great savings in the cost of production. At these works are treated the ores of the Anaconda, Washoe, Parrot, Colorado and Butte & Bston Mining Companies. The ores of the Boston & Montana Company are treated at its own smelter in Great Falls.

The State of affairs in regard to litigation during the last few years in some of the District Courts of Montana has been deplorable. What is known as the "law of the apex," passed by Congress in 1872, gives the right, under certain conditions and within certain limits, to follow a vein from its apex into adjoining ground. This law has given rise to a vast amount of litigation, as, under it, the owner of a property adjoining a rich <sup>mine</sup> ~~vein~~, even if he has no valid claim, may assert ownership in the ore of the latter, and subject the real owner to vexatious, costly and prolonged litigation.

The Companies, controlled wholly or in part by the Amalgamated Company, have been harassed by litigation of this nature on an enormous scale and have had to contend constantly with this and other litigation to preserve their existence. The heavy expenses, incurred in this litigation, and the cost of building the new Reduction Works, opening and developing new coal mines and making settlements for damage claims, have been paid entirely out of the earnings.

Matters in Montana are now in much better condition. The Supreme Court has passed upon the legality of the Company's standing in that State

and the "Fair Trial Bill" prevents the hearing of cases by District Judges, against whom prejudice or bias can be shown.

The Company owns the entire stock of the Washoe Copper Company, the Colorado Smelting (now the Trenton Mining & Development) Company and the Big Blackfoot Milling Company, all but a few shares of the Boston & Montana and Butte & Boston Companies, and a majority interest in the Anaconda and Parrot Companies. The Big Blackfoot Milling Company owns more than one million acres of timber lands (upon which there is estimated to be over four billion feet of standing timber) and saw mills, turning out 85,000,000 feet of lumber per annum.

The Company also owns all the stock of the Diamondville Coal & Coke Company, which mines and ships 600,000 tons of coal per annum; and its mines in Wyoming are estimated by coal experts to contain an available supply of 73,500,000 tons.

The Company, through its ownership of all the Washoe Copper Company stock, holds 1,900 acres of the Bear Creek coal lands in the vicinity of Red Lodge, Montana, and also all the the coking coal property at Storrs, Montana, now under development, as well as a controlling interest in the Coke-dale Coal Company, owning coal lands and a plant which is equipped with 100 coking ovens.

The Company likewise owns a Public Sampling Works, a business block in Butte and another business block in Anaconda.

From the Anaconda Company's coal lands at

Belt, Montana, are mined and shipped 375,000 tons of coal per annum and coal experts estimate that there still remain 3,100,000 tons of available supply. The Anaconda Company also owns a hotel in Anaconda and one in Hamilton, and has a very large interest in the stock of the Butte, Anaconda, and Pacific Railroad Company, the line of which runs from Butte to Anaconda. It also owns twenty-seven thousand acres of timber lands. Its saw mills in Hamilton, Montana, turn out 30,000,000 feet of lumber annually.

The principal asset of the Company consists in the ownership, through the Companies above mentioned, of copper mines, the value of which is largely dependent upon the duration of their productiveness. The mines look as well at the present time as at any period of the Company's existence, and there are no indications, that they have not a long productive life before them.

Exclusive, however, of the said copper mines, the assets of the Company (consisting of timber lands, coal mines, reduction works, saw mills, railways, real estate, buildings, copper and cash,) controlled through the ownership of other Companies, are of very great value, exceeding in the opinion of experts, in whom the officers have entire confidence, \$50,000,000 over all liabilities of the Company.

The Company, directly or indirectly, employs in Montana 12,000 men and expends annually for wages \$14,000,000.

The Companies, owned wholly or in part by the



Amalgamated Company, produced in 1904, 252,000,000 pounds of refined copper (including only a small amount from custom ore). Of this amount, the Amalgamated Company received the benefit from 202,000,000 pounds, which is about 25 per cent. of the total production of the United States. As the outstanding capital stock of the company is \$153,887,900, each pound of copper produced is capitalized at seventy-six cents per pound, without taking into consideration any earnings from other sources than mining.

By comparison with the oldest and most conservative Copper Companies, it will be found that the Calumet & Hecla Company's stock, selling at a market valuation of about \$64,000,000, and producing annually 80,000,000 pounds of copper, has a market capitalization of eighty cents per pound of copper produced, and that the Rio Tinto Company, having a market valuation of about \$125,000,000 (including stock and bonds) and producing annually refined copper and copper in pyrites, amounting to 80,000,000 pounds, has a market capitalization of one dollar and fifty-six cents (\$1.56) per pound produced.

A fluctuation in the price, received for the product of one year between 11.70 cents and 16.50 cents per pound (the highest and lowest prices during the past five years,) means a difference to a copper company of the magnitude of the Amalgamated Company of \$9,700,000 in Annual net earnings, or over six per cent. on the capital stock.

At the present time the status of the Company



and the position of the metal market are more satisfactory than at any time since the early part of 1901.

A. H. MELIN,

Secretary.

CONDENSED BALANCE SHEET.

Of the

AMALGAMATED COPPER COMPANY.

April 29, 1905.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Saw-mills Standing Timber, Water Rights, Land, etc. ....	\$154,281,303.18
Office Furniture .....	2,500.00
Loan to Washoe Copper Company for Smelter Construction.....	7,350,000.00
Cash and Cash Assets.....	2,756,758.83
	<hr/>
	\$164,390,562.01

LIABILITIES.

Capital Stock, authorized issue, 1,550,000 shares of \$100 each, \$155,000,000, of which there is outstanding .....	\$153,887,900.00
Accounts Payable .....	21,070.67
Dividend No. 23, Payable May 29, 1905 .....	1,538,879.00
SURPLUS and RE-SERVE .....	\$10,481,591.34

Less amount set aside for payment of Dividend No. 23, May 29th, 1905.....	1,538,879.00	
	<hr/>	8,942,712.34
		<hr/>
		\$164,390,562.01

We have examined the books and accounts of the Amalgamated Copper Company for the six years, ending April 29, 1905, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 29, 1905.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 25, 1905.

POGSON, PELOUBET & CO.,

Auditors.

**Complainants' Exhibit L.**

At a meeting of the Board of Directors of the Amalgamated Copper Company, in May, 1906, the Secretary was authorized to issue to the Stockholders the following statement, together with a con-

densed Balance Sheet of the Company as of April 30, 1906;

For several years prior to the organization of the Amalgamated Copper Company, and constantly since that time, an extensive litigation has been carried on by and against the Companies, now owned wholly or in part by this Company, and by and against certain other Companies and individuals, whose interests were about four years ago acquired by the United Copper Company.

In February, 1906, negotiations were concluded whereby parties friendly to the Amalgamated Copper Company purchased from the United Copper Company a large portion of its property, including those mines and mining claims which had been the principal cause of the conflicting contentions involved in the said litigation. These were then transferred, at their actual cost, to a new and independent Company, called the Red Metal Mining Company, all the stock of which was at once acquired, also at cost, by a Holding Company, called the Butte Coalition Mining Company, which is likewise controlled by the same friendly parties.

The Minnie Healy claim, the property of the Red Metal Mining Company, has been one of the main points of contention throughout the litigation just ended; but the suit in relation thereto and all other suits involved in the foregoing litigation have now been discontinued or dismissed and an agreement has been made, providing for the selection by the respective Companies of experienced engineers whose duty it will be to recommend to

the Boards of Directors of the Companies, interested in the disputed territory, the establishment of premanent boundaries therein, which recommendations are to be finally passed upon by the said Boards.

Not only will the heavy annual expense of this prolonged litigation to the Amalgamated Copper Company and its subsidiary Companies be thus avoided, but the cessation of all hostilities will permit the working of many properties of known value, the operation of which has hitherto been restrained by injunctions.

In consideration of the assistance that the Amalgamated Copper Company has given to, and the benefits that have been derived by, the parties who have formed the other two corporations above mentioned the Amalgamated Copper Company has been given an option to purchase a substantial block of the stock of the Butte Coalition Mining Company at cost.

The valuable Tramway and Snohomish properties (in the former of which the Butte & Boston Company owns a two-third and in the latter a one-half interest, the Red Metal Mining Company owning the remainder) will now be jointly developed by these Companies. Work will also now be prosecuted on the Michael Davitt property, which is owned by the Butte & Boston Company and has been idle for several years.

The working of certain levels of the Pennsylvania mine, belonging to the Boston & Montana Company, had been practically at a standstill for

several years, owing to the injunctions which prevented an extension of the levels under certain town lots adjoining those owned by that Company. These lots having now been acquired by the Red Metal Mining Company, an arrangement will be made whereby immediate work can be resumed by both Companies.

For several years, one of the most valuable sections of the Boston & Montana property, in the neighborhood of the Leonard shaft, had been tied up by injunction. The settlement of the said litigation will now enable the Boston & Montana Company to work to its south lines in the ore bodies already partially developed.

The Nipper property, in which the Anaconda Company owns a five-thirty-sixth and the Red Metal Mining Company a thirty-one-thirty-sixth interest, will now be worked jointly by both Companies, as all litigation in respect to those interests has also ceased and the question of extra-lateral rights between the said Nipper property and the properties of the Parrot and Anaconda Companies has been settled.

During the past year, discoveries of paramount importance have been made in the Butte camp. It had long been the opinion of mining men and geologists, that the grade of the ore would diminish in value as great depths were reached. In order to test this theory, some of the shafts of the Anaconda Company were sunk several hundred feet, to a total depth of 2,400 feet. It is gratifying

to learn, that bodies of ore of a better grade than those existing on the intermediate upper levels do actually exist at this greater depth and that thus the life of the Butte camp may be regarded as indefinitely prolonged.

The concentrating and smelting works of the Washoe Copper Company at Anaconda are being operated with such success, that the cost of treating crude ore has been reduced materially during the past year and a further reduction is expected. The cost of mining has also been reduced.

At the smelting plant of the Boston & Montana Company, at Great Falls, reductions have likewise been made in the cost of treatment, and the officials report that they expect to make still greater reductions during the ensuing year.

The demand for electrolytic copper in 1905 was such, that the price rose from  $15\frac{3}{8}$  cents per pound in April to  $18\frac{1}{2}$  cents per pound, in December, at which latter price all the copper since produced by the mines, owned wholly or in part by the Amalgamated Copper Company, has been sold.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1905, from their own and custom ores, about 268,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 216,000,000 pounds.

The statistical position of the metal and the

present and prospective demand for its use are highly satisfactory.

A. H. MELIN,  
Secretary.

CONDENSED BALANCE SHEET  
of the  
AMALGAMATED COPPER COMPANY.  
April 30, 1906.

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ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc.....	\$154,428,228.18
Loan to Washoe Copper Company for Smelter Construction.....	7,350,000.00
Cash and Cash Assets.....	4,080,448.93
	<hr/>
	\$165,858,677.11

LIABILITIES.

Capital Stock, authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding .....	\$153,887,900.00
Accounts Payable .....	22,043.97
Dividend No. 27, payable May 28, 1906 .....	2,693,038.25

SURPLUS AND RESERVE:

Balance, April 29,

*Anaconda Copper Mining Co. et al.* 595

1905 .....	\$8,942,712.34	
Add Net Income for the year end- in April 30, 1906	9,161,536.80	
	<hr/>	
	\$18,104,249.14	
Deduct Dividends Nos. 24, 25, 26 and 27 .....	8,848,554.25	
	<hr/>	
		9,255,694.89
		<hr/>
		\$165,858,677.11

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1906, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1906.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 22, 1906.

POGSON, PELOUBET & COMPANY,

Auditors.



At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1907, the Secretary was authorized to issue to its stockholders the following statement, together with a condensed Balance Sheet of the Company, as of April 30, 1907:

For the first time since the organization of the Amalgamated Copper Company, operations in the various properties controlled by it have been successfully carried on during the past year without the intervention of harrassing litigation, and consequently a large amount of development work, hitherto retarded by court injunctions, has been accomplished. In the early part of the year experienced engineers, selected by the different Companies, which had had conflicting claims against contiguous properties, in which the Amalgamated Copper Company was interested, met in Butte, and after a full examination of the local conditions, formulated a plan for the settlement of the boundary rights and also of the complicated questions relating to apex. Their conclusions were submitted to and adopted by the Boards of Directors of the various Companies controlled by the Amalgamated Copper Company.

A large working shaft upon the Tramway claim is now in process of construction, and when completed it will afford an outlet for the ores from the Tramway and Snohomish mines, the title to a portion of which is owned by the Butte & Boston Company.

A large and valuable ore territory in the Pennsylvania mine, mentioned in the Report of last year, has been developed and at present is supplying a daily output of high grade ore from the Boston & Montana and the Red Metal Mining Companies.

The development during the past year has, in confirmation of the experience of the preceding year, proved that the ore bodies in the lowest levels of the Anaconda, the Colorado, the Boston & Montana and the Butte & Boston mines are of a better grade than those existing on the intermediate upper levels.

The blast furnace, as well as the reverberatory and calcining furnaces in the smelting works of the Washoe Copper Company at Anaconda, have been enlarged, and now upwards to 10,000 tons of ore are treated daily. There is no reason to think that this tonnage cannot be maintained.

The reduction works of the Boston & Montana Company at Great Falls have been taxed to their utmost in handling the output from its mines, and work has just been started whereby the tonnage of ore which can be treated daily by these works will be increased by one thousand tons. This, however, will require the building of an entire new section in the concentrating department, a general increase of facilities in all of the other departments and the erection of a smoke stack 500 feet in height and having a diameter of 50 feet. This will be provided with the necessary flues and dust chambers for the successful and

economical handling of the ores.

A settlement of the labor question, satisfactory to both employer and employe, has been arranged and a contract in relation thereto has been signed by the officials of all the Mining Companies and the different labor unions, covering a period of five years.

The condition of the copper metal market during the past year has been highly satisfactory. The price of the metal rose from 18½ cents in December, 1906, to 25¼ cents in March, 1907. At the close of the Company's fiscal year, all the refined copper that can be produced up to the first of July next by the various Companies, controlled by this Company, has been sold in advance.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1906, from their own and custom ores about 275,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 224,000,000 pounds.

A. H. MELIN,  
Secretary.

AMALGAMATED COPPER COMPANY.  
BALANCE SHEET, APRIL 30, 1907.

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#### ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Re-

fineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc .....	\$ 156,480,907.83
Loan to Washoe Copper Com- pany for Smelter Construction	7,350,000.00
Cash and Cash Assets.....	4,640,797.63
	<hr/>
	\$ 168,471,705.46

### LIABILITIES.

Capital Stock; authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding .....	\$153,887,900.00
Accounts Payable .....	22,264.80
Dividend No. 31, payable May 27, 1907, .....	3,077,758.00

### SURPLUS AND RESERVE:

Balance, April  
30, 1906 .....\$ 9,255,694.89

Add Net In-  
come for the  
year ending  
April 30, 1907 14,154,400.02

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\$ 23,410,094.91

Deduct Divi-  
dends Nos. 28,  
29, 30 and 31.. 11,926,312.25

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11,483,782.66

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\$ 168,471,705.46

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1907, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1907.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings, after making ample provision for depreciation, dismantlements, depletion of coal and timber lands, and the adjustment of copper on hand to cost.

New York, May 15, 1907.

POGSON, PELOUBET & COMPANY,

Auditors.

**Complainants' Exhibit N.**

At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1908, the Secretary was authorized to issue to the Stockholders the following statement, together with a condensed Balance Sheet of the Company, as of April 30, 1908:

During the fiscal year of the Amalgamated Copper Company, which ended April 30, 1908, the fluctuation in the selling price of the copper metal was greater than at any other period in the history of the copper trade. At the time of the last annual statement in May, 1907, there was an

unlimited demand for the metal, the selling price at that time being in the neighborhood of 25 cents per pound. This demand was afterwards seriously affected by the severe financial depression throughout the country, and in the early summer of 1907 it suddenly slackened, and afterwards almost altogether ceased. The price of copper meantime gradually declined; and during the last two months of the fiscal year, the metal has sold at from 12 to 13 cents per pound.

The business paralysis in the United States was, however, not fully reflected abroad, and most of the copper metal, that was sold in the market (and this was a large quantity), was bought for European account, the purchasers taking advantage of the low price of the metal to replenish holdings, which had been allowed to become depleted during the former period of high prices.

Immediately after the first falling off in the demand, there was a natural tendency on the part of the producers of copper to await better business conditions; and, during this period, as but little copper was sold, a large amount was naturally accumulated.

After the price of copper had fallen considerably in the market, the officials of the various producing Companies adopted the policy of curtailing the output from their respective mines at Butte. But, after operating for a period of several months under curtailed conditions, during which time the producing cost was far in excess of the normal (owing to the fact that each Com-

pany was producing only a small part of its normal output), it was deemed advisable to confine all operations to one unit. The mines and smelter of the Boston and Montana Company at Great Falls were put in operation to their fullest extent and with satisfactory results.

In February, 1908, the surplus stock of copper had practically disappeared; and, on March 1, 1908, the mines of the different Companies and the Washoe Smelter were again put into commission and are now being operated to their full capacity.

The plans, formulated by the Engineers, mentioned in the last Report, for the settlement of boundary rights and questions of apex, have been in operation for over a year and all parties, having any interest in the matter, have been satisfied with the results.

The tramway shaft, which has been sunk jointly by the Red Metal Mining Company and the Butte and Boston Company, and through which it is expected that the ores from the Minnie Healey and the Snohomish and Tramway mines will be hoisted, has reached a depth of 1,400 feet below the surface and is now being sunk to the 1,500 foot level. Cross cuts from the lower levels of this shaft are now being driven into the contiguous territory, and the ore bodies developed have been most satisfactory.

The Washoe Smelter, at Anaconda, has been equipped with electric power, thereby greatly lessening the cost of operation, and is able to treat

10,000 tons of ore per day without difficulty.

The Boston and Montana Company has throughout the year diligently prosecuted the improvements in its Reduction Works at Great Falls. All of the grading for the flues and dust chambers has been finished; and the new stack, the top of which when completed will be 506 feet above the foundation, has been built to a height of about 50 feet.

The usual amount of development work in the different properties has been carried on throughout the year, and the results in most cases have been gratifying.

The continued occurrence of high grade ores in the lowest levels of the mines, controlled by the Amalgamated Company, and in the adjacent mines of other Companies, tends to confirm the confidence, which the Company's Engineers have always had in the future of the Butte District.

The saw mills of the Big Blackfoot Milling Company were operated to the extent required to meet the demand of the mines at Butte and the commercial trade generally. Some decrease in output was made necessary on account of the curtailment of ore production at Butte and by reason of the fact that the demand for commercial lumber fell off materially during the financial depression.

The said Company has confined its operations to the timber areas, adjacent to its original mill sites. Its largest timber holdings still remain intact. The earnings for the year were quite satis-



factory and the output of its mills is now normal.

The Belt mines, owned by the Anaconda Copper Mining Company, and the mines of the Diamond Coal & Coke Company were operated with satisfactory results, notwithstanding the fact that during a portion of the year the demand for coal greatly diminished.

Constant development work has been kept up throughout the year on the coal property, located at Bear Creek, Montana, and owned by the Washoe Copper Company and the mines, which have been opened, have been for several months producing most satisfactorily. The quality of the coal is excellent and the field is one of great promise.

The harmonious operation of the five-year labor contract, which was entered into between the employees of the different departments and the officials of the Mining Companies, has worked satisfactorily.

The Companies, owned wholly or in part by the Amalgamated Copper Company, produced in the calendar year 1907 from their own and custom ores, about 212,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 178,000,000 pounds.

A. H. MELIN,

Secretary.

AMALGAMATED COPPER COMPANY.

BALANCE SHEET, APRIL 30, 1908.

ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc., .....	\$ 156,480,647.18
Loan to Washoe Copper Company for Smelter Construction .....	7,200,000.00
Cash and Cash Assets .....	3,007,830.56
	<hr/>
	\$ 166,688,477.74

LIABILITIES.

Capital Stock; authorized issue, 1,550,000 shares of \$100 each, \$155,000,000 of which there is outstanding .....	\$ 153,887,900.00
Accounts Payable .....	22,314.80
Dividend No. 35 payable May 25, 1908 .....	769,439.50

SURPLUS AND RESERVE:

Balance, April 30, 1907 .....	\$ 11,483,782.66
Add Net Income for the year ending April 30, 1908 .....	6,680,556.78
	<hr/>
	\$ 18,164,339.44

Deduct Dividends Nos. 32,

33, 34, and 35      6,155,516.00

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12,008,823.44

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\$ 166,688,477.74

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30, 1908, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing balance sheet correctly shows the financial condition of the Company on April 30, 1908.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact that all dividends, received therefrom by the Amalgamated Copper Company, have been paid out of current net earnings and undivided profits, after making ample provision for depreciation, dismantlements and depletion of coal and timber lands.

New York, May 14, 1908.

POGSON, PELOUBET & COMPANY,

Auditors.

**Complainants' Exhibit O.**

At a meeting of the Board of Directors of the Amalgamated Copper Company in June, 1909, the Secretary was authorized to issue to the Stockholders the following statement, together with a condensed balance sheet of the Company as of April 30, 1909.

The producing Companies controlled by the

Amalgamated Copper Company, have been operated continuously throughout the fiscal year, with the exception of the Anaconda Copper Mining Company and the Boston & Montana Consolidated Copper & Silver Mining Company. The former was compelled to cease operations for a short period of time at their Washoe Reduction Works, due to the fact that the Railroad Companies were unable, on account of severe climatic conditions to transport a sufficient supply of coke; and the Reduction Works of the Boston & Montana Mining Company at Great Falls were closed from early in June until the middle of September, on account of damage by flood to the Power Plant of the Company and to the Railroads, which transport the ore.

The copper business, during the period covered by this report, has been dull and the ruling price of the metal has been low. During most of the year, the production ran in excess of consumption, but at the present time deliveries of the metal are about equal to the production. Sales have been made in the sufficient amount to practically absorb the accumulated surplus, made in the early part of the year.

All conditions in the Butte camp during the year, tending toward the successful operation of the different properties, have been quite satisfactory, and the cost per pound of copper produced has been materially lessened. The normal amount of development work has been carried on in all of the properties, and the officials of the

different producing Companies report, that this has been done with very satisfactory results and that in several of the mines, new ore bodies have been found at depth, which had never been encountered on the upper levels.

The fire in the Anaconda mine, which has been burning for a period of nineteen years, has occasioned some inconvenience from time to time, but has not interfered seriously with the operation of the property for any length of time.

A new shaft on the Belmont claim, belonging to the Anaconda Copper Mining Company, has been put in condition and equipped, and will eventually be connected with the lower levels of the Anaconda mine. This when completed will be used as an auxiliary shaft for the operation of the Anaconda Properties.

The shaft at the Parrot mine have been sunk to a depth of 2000 feet and cross cuts to the vein have been made at the 1900 and 2000 foot levels. While the vein at these depths shows ore of a concentrating grade, it is not equal to the average concentrating grade of the camp, and will not yield a profit at present prices for the Metal.

The Little Mina claim, owned by the Parrot Company, has been developed by a shaft which has now attained a depth of 1200 feet, and a shoot of ore of good grade has been developed on the 1000 foot level. Cross cuts are at present being extended toward the vein on both the 1100 and 1200 foot levels.

The shaft at the Gagnon Mine, owned by the

Trenton Mining & Development Company, is now 2300 feet deep, and the discovery of new ore bodies on the lowest levels has increased the value of this mine.

The improvements at the Reduction Works at Great Falls, consisting of a stack 506 feet in height, with flues and dust chambers, are practically completed, and will shortly be in full operation.

The sawmills of the Big Blackfoot Milling Company have been operated to a greater extent than during the previous fiscal year, owing to the fact that the mines at Butte, on account of their constant operation, have required a larger amount of timber and the commercial demand, while still far below the average, is showing a gradual improvement.

The coal mines at Belt, owned by the Anaconda Copper Mining Company, and the mines at Diamondville, owned by the Diamond Coal & Coke Company, have been operated continuously, with very satisfactory results, throughout the year.

The developments at the Bear Creek coal mines, owned by the Washoe Copper Company, have also been most satisfactory, and a grade of coal is being produced, which compares most favorably with the best Wyoming coal.

A considerable betterment has been made in the mining and reduction costs by the use of electric power. Electric pumps have been installed in the mines during the year and operated with good results and it is planned to do hereafter all

of the pumping in the mines with this power. Investigations are now being made to determine the feasibility and economy of operating all the hoisting plants of the different Companies by compressed air, generated by electric power.

The Companies, owned solely or in part by the Amalgamated Copper Company, produced for the calendar year 1908, from their own and custom ores, about 234,000,000 pounds of refined copper, of which amount the Amalgamated Copper Company received the benefit from about 199,000,000 pounds.

A. H. MELIN,

Secretary.

AMALGAMATED COPPER COMPANY.

Balance Sheet, April 30, 1909.

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ASSETS.

Investment in Securities, etc., representing ownership in Copper Mines, Mining Claims, Mining Plants, Reduction Works, Refineries, Coal Mines, Sawmills, Standing Timber, Water Rights, Land, etc. ....	\$156,481,847.18
Loan to Washoe Copper Company for Smelter Construction .....	7,200,000.00
Cash and Cash Assets .....	3,593,102.33
	<hr/>
	\$167,274,949.51

LIABILITIES.

Capital Stock; authorized issue

*Anaconda Copper Mining Co. et al.* 611

1,550,000 shares of \$100 each, \$155,000,000, of which there is outstanding .....	\$153,887,900.00
Accounts Payable .....	22,564.80
Dividend No. 39, Payable May 31st, 1909 .....	769,439.50

**SURPLUS AND RESERVE.**

Balance April 30th, 1908 .....	\$12,008,823.44
Add net income for year ending April 30th, 1909.....	3,663,979.77
	<hr/>
	\$15,672,803.21
Deduct Dividends Nos. 36, 37, 38 and 39 .....	3,077,758.00
	12,595,045.21
	<hr/>
	\$167,274,949.51

We have examined the books and accounts of the Amalgamated Copper Company for the year ending April 30th, 1909, and have verified the Assets and Liabilities shown above. We hereby certify that the foregoing Balance Sheet correctly shows the financial condition of the Company on April 30th, 1909.

We have also examined into the affairs of the Companies, in which the Amalgamated Copper Company owns stock, and have verified the fact, that all dividends received therefrom by the Amalgamated Copper Company have been paid out of current net earnings and undivided profits, after



making ample provision for depreciation, dismantlements and depletion of coal and timber lands.

New York, May 18th, 1909.

POGSON, PELOUBET & CO.

Auditors.

**Exhibit AA.**

Copper on hand in East and Great Falls and in  
Transit to East December 31st, 1909.

A. C. M. Co .....	24,275,523
Boston & Montana .....	12,643,536
Butte & Boston .....	6,146,888
Trenton .....	1,952,316
Parrot .....	1,247,975
Washoe .....	22,812,554

**Exhibit BB.**

Copper on hand in East and Great Falls and in  
Transit to East June 30th, 1909.

Anaconda Copper Mining Co. ....	22,139,985
Boston & Montana .....	23,937,003
Butte & Boston .....	6,560,681
Trenton .....	2,367,945
Parrot .....	1,816,159
Washoe .....	25,794,502

**Exhibit CC.**

Copper on hand in East and Great Falls and in  
Transit December 31st, 1908.

Anaconda Copper Mining Co. ....	25,815,445
Boston & Montana .....	14,710,306
Butte & Boston .....	4,791,348
Trenton .....	1,814,296
Parrot .....	1,685,871

*Anaconda Copper Mining Co. et al.* 613

Washoe .....	19,750,704
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**Exhibit DD.**

June 30th, 1908.

Anaconda Copper Mining Co. ....	19,470,549
Boston & Montana .....	7,655,278
Butte & Boston .....	4,574,958
Trenton .....	1,472,503
Parrot .....	1,271,600
Washoe .....	18,266,809

**Exhibit EE.**

December 31st, 1907.

Anaconda Copper Mining Co. ....	23,262,604
Boston & Montana .....	13,054,401
Butte & Boston .....	5,579,975
Trenton .....	1,433,717
Parrot .....	1,869,446
Washoe .....	20,117,598

**Exhibit FF.**

June 30th, 1907.

Anaconda Copper Mining Co. ....	21,231,233
Boston & Montana .....	13,116,010
Butte & Boston .....	5,042,160
Trenton .....	1,631,058
Parrot .....	1,287,490
Washoe .....	21,251,003

**Exhibit GG.**

December 31st, 1906.

Anaconda Copper Mining Co. ....	17,387,088
Boston & Montana .....	11,721,690
Butte & Boston .....	3,824,064
Trenton .....	1,071,623
Parrot .....	1,297,080

614 *Peter Geddes et al. vs.*

Washoe .....	13,349,656
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**Exhibit HH.**

June 30th, 1906.

Anaconda Copper Mining Co. ....	30,629,411
Boston & Montana .....	15,493,584
Butte & Boston .....	3,946,097
Trenton .....	2,141,933
Parrot .....	1,895,864
Washoe .....	10,908,842

**Exhibit II.**

December 31st, 1905.

Anaconda Copper Mining Co. ....	24,691,785
Boston & Montana .....	16,971,182
Butte & Boston .....	4,634,753
Trenton .....	2,088,619
Parrot .....	2,284,789
Washoe .....	9,386,949

**Exhibit JJ.**

June 30th, 1905.

Anaconda Copper Mining Co. ....	26,020,146
Boston & Montana .....	19,412,570
Butte & Boston .....	5,213,373
Trenton .....	2,130,316
Parrot .....	1,887,023
Washoe .....	9,804,959

**Additional Figures—Melin**

Year ending June 30th, 1899.	Baltimore
Anaconda Copper Mining Co. ....	18,997,912 lbs.
Year ending June 30th, 1900	Baltimore
Anaconda Copper Mining Co. ....	51,485,088 lbs.
Year ending June 30th, 1901	Baltimore
Anaconda Copper Mining Co. ....	83,942,467 lbs.

*Anaconda Copper Mining Co. et al.* 615

Year ending June 30th, 1902. Baltimore

Anaconda Copper Mining Co. ....	10,347,818 lbs.
Boston & Montana C. C. & S. M. Co. ....	19,270,622 "
Butte & Boston Cons. M. Co. ....	13,300,454 "
Parrot S. & C. Co. ....	2,618,465 "
Washoe C. Co. ....	1,357,476 "

Year ending June 30th, 1903. Baltimore

Anaconda Copper Mining Co. ....	27,499,695 lbs.
Boston & Montana C. C. & S. M. Co. ....	26,958,371 "
Butte & Boston Cons. M. Co. ....	4,969,691 "
Parrot S. & C. Co. ....	4,671,789 "
Washoe C. Co. ....	6,589,115 "

Year June 30th, 1904. Baltimore

Anaconda Copper Mining Co. ....	37,368,832
Boston & Montana C. C. & S. M. Co. ....	35,931,056
Butte & Boston .....	7,088,938
Trenton .....	394,166
Parrot .....	6,016,554
Washoe .....	8,202,612

December 31st, 1904. Baltimore

Anaconda Copper Mining Co. ....	32,622,566
Boston & Montana .....	21,821,769
Butte & Boston .....	5,889,383
Trenton .....	881,823
Parrot .....	3,345,609
Washoe .....	7,991,909

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[Testimony of Joseph Warner Allen, for Complainants]

JOSEPH WARNER ALLEN, called as a witness in behalf of the complainants, being first duly sworn, testified in substance, as follows:

My name is Joseph Warner Allen, and I live at

Elizabeth, New Jersey. I am engaged in the copper business. I am Secretary of the Inspiration Consolidated Copper Company, the International Smelting & Refining Company and subsidiary Companies; Greene Cananea Copper Company, and subsidiary companies. I was officially connected with the Alice Gold & Silver Mining Company from 1908 until 1912, I think, until it was turned over to the Amalgamated through the purchase of that stock. While I was acting as secretary and treasurer of that Company, my office was at 42 Broadway, New York; first on the sixth floor and afterwards on the twentieth. I was also Secretary and Treasurer of the Butte Coalition Company from 1907 until the Company was dissolved in 1912. These two Companies, as far as the Secretary's office was concerned occupied the same office. I had charge of the books of the two companies at one and the same time. Generally I got my directions regarding my duties as Secretary and Treasurer from the President of the Company,—Thomas F. Cole in the Butte Coalition and John D. Ryan in the case of the Alice. The books and records of the Alice Company were turned over to the new officers of the Company at the time I resigned as Secretary and Treasurer. D. B. Hennessy is now Secretary and Treasurer of the Company; I think Ryan is still President. Mr. Hennessy has an Office in this building on the twenty-first floor. I have with me the minute book of the Alice Gold & Silver Mining Company.

MR. WALSH: We offer the record of the pro-

ceedings of the Directors' meeting held April 27th, 1910, appearing at pages 56 to 60, inclusive, transcript thereof being marked "Complainants' exhibit KK."

At this meeting the resignation of Mr. W. D. Thornton, as a Director, was accepted, and Mr. W. S. Harper was elected to fill the vacancy. Mr. Harper is associated with me in various companies, of which I am Secretary and Treasurer. He was with the Butte Coalition Mining Company; the International Smelting & Refining Company, and the Greene Consolidated Copper Company; he was Chief Accountant and Treasurer of the various companies. He owned 100 shares of stock of the Company at that time, that is it stood in his name on the books of the Company. As regards your information that the Butte Coalition Company owned a majority of the shares of the stock of the Alice Company, I will say that they did not appear of record as a stockholder at that time, whatever stock they did own stood in the name of individuals. The hundred shares standing in Mr. Harper's name were owned by the Butte Coalition Company. Mr. Carson likewise resigned and Mr. T. J. Clarke was elected to fill the vacancy. Mr. Clarke is the Assistant Secretary, I think of the Hedley Gold Mining Company. As I remember it, Mr. Clarke held 100 shares of the Alice Company for the Butte Coalition. The Stockholders' Meeting at which action was taken, appears in this book at pages 61 to 86, inclusive.

MR. WALSH: I then offer the proceedings of

the Stockholders' Meeting held on the 27th of May, 1910.

Looking over the list of shares present at the Stockholders' Meeting, referred to, I will indicate the persons apparently owners of stock in the Alice Gold & Silver Mining Company, who were really holding the stock standing in their names for the Butte Coalition Company. They are as follows: E. S. Ferry, 100; J. W. Allen, 115,098; W. S. Harper, 100; John D. Ryan, 60656; W. D. Thornton, 58161; John D. Clarke, 100; total 234,215. Mr. E. S. Ferry was a member of the law firm of Richards & Ferry, of Salt Lake. I think he is now dead. He was counsel for the Alice for the State of Utah. His firm, I think, had an annual retainer and looked after whatever business of this character it was necessary to take care of in the State of Utah. I think they were paid by me as Treasurer of the Alice Company. I believe Mr. D. Gay Stivers is a lawyer in Butte, one of the Attorneys for the Anaconda Company. The Mr. Hamer who is substitute proxy for L. McQueeney, I do not know. Mr. E. S. Ferry became proxy for all the stockholders commencing with Mrs. Caroline Adler, down to Joseph F. Baer. A proxy was inclosed with the call of the meeting sent to all stockholders, and I assume Mr. Ferry's name was printed in the proxy. The best of my recollection is that the proxy originated from my office. Exhibit "LL" is the blank copy of the proxy that was sent out, that I have told you about. It contemplated that it might be voted by either, Thornton,

Ferry or Kelly. Mr. Kelly is the General Counsel for the Anaconda Company in Butte. There was a circular letter accompanying each of these proxies, as is customary, even in the case of an annual meeting.

MR. WALSH: We offer exhibit "LL" in evidence.

I know of no other stockholders who hold stock in trust. Complainants' exhibit "MM," consisting of 14 letters are the letters sent out with these proxies.

MR. WALSH: We offer complainants' exhibit "MM" in evidence.

Mr. Ferry had these proxies and was called upon to vote to em, but I do not know as there were any directions sent to him direct in those letters. Apparanetly those letters were all that were found in the files. I do not know as I can say how Mr. Ferry was advised as to how he should vote at the meeting. As far as I know he might have voted against this proposition to sell, but, of course, I did not expect anything of that kind, presumably somebody must have given Mr. Ferry directions to vote the proxies in favor of the proposition. I assume whatever directions Mr. Ferry got came either from Mr. Kelly or Mr. Thornton. Mr. D. Gay Stivers was at the meeting and acted as Secretary. It is very probably that instructions were carried by him. He would get his instructions from the officers of the Alice Gold & Silver Mining Company. Such directions might be imparted verbally by one of the officers of the Com-



pany, either the President, Vice-President, or the Secretary and Treasurer. As Secretary and Treasurer, I did not give him directions, so I presume that the instructions were either from the President or Vice-President. Possibly Mr. Hamer was a clerk in the Offices of Richards & Ferry.

MR. WALSH: I now want to offer the Minutes of the meeting of the directors held on Monday, the 12th day of April, 1911, appearing at pages 109 and 110 of the record; also the meeting of stockholders, appearing at pages 111 to 122, being the dissolution meeting; said minutes were marked "Complainants' exhibit NN," and are hereinafter set out in full.

The correspondence I have in relation to the dissolution meeting is in substance the same as that in connection with the other meeting.

**Cross Examination.**

There were about 2000 stockholders of the Butte Coalition Company when its stock was originally issued; about 3500 in 1910, and about 3000 at the time of the dissolution of the Company.

(Witness Excused.)

(The exhibits referred to in the testimony of the witness, Allen, are respectively, as follows.)

**Exhibit KK.**

Minutes of a Special Meeting of the Board of Directors of the ALICE GOLD & SILVER MINING COMPANY, held at the office of the Company, 42 Broadway, New York City, on Wednesday, the 27th day of April, A. D. 1910, at 12 o'clock M.

PRESENT: John D. Ryan, W. D. Thornton, J.

W. Allen and A. C. Carson, Directors of the Company.

The following waiver of notice and consent to the holding of the meeting was signed by the following named Directors:

We, the undersigned, Directors of the Alice Gold & Silver Mining Company, do severally waive notice of a special meeting of the Directors of the said Company, and do hereby consent to the holding of such meeting on Wednesday, the 27th day of April, A. D. 1910, at the hour of 12 o'clock, M., and to the transaction thereat of any and all business which may properly come before said meeting, with the same effect as if such meeting had been regularly called and due notice thereof given to all concerned.

(Signed) JOHN D. RYAN,  
" W. D. THORNTON,  
" A. C. CARSON,  
" J. W. ALLEN.

A written waiver of notice and consent to holding the meeting, signed by Mr. E. S. Ferry, one of the Directors, was presented to the meeting and filed with the Secretary.

The meeting was duly organized, Mr. John D. Ryan, President of the Company, acting as Chairman of the meeting, and Mr. J. W. Allen, Secretary of the Company, acting as Secretary thereof.

The President stated the purpose of the meeting; whereupon the following resolution was introduced, and upon motion, duly seconded, was unanimously adopted:

WHEREAS, the Anaconda Copper Mining Company, a corporation organized under the laws of the State of Montana, has offered to purchase all of the property of every kind, character and description, owned or possessed by this Company, and to issue and pay to this Company in exchange therefor 30,000 shares of the full paid capital stock of said Anaconda Copper Mining Company; and,

WHEREAS, it is believed by the Board of Directors of this Company that it is to the best interests of this Company and its shareholders to accept the said offer; therefore, be it

RESOLVED, that this Company proceed to sell and convey to the said Anaconda Copper Mining Company all of the lands, mining claims, mines, equipment and other assets of every kind, character and description owned or possessed by this corporation, upon the payment therefor of 30,000 shares of the capital stock of the said Anaconda Copper Mining Company, said sale and transfer to be made subject to the ratification and approval of a majority in amount of the capital stock of this Company at a meeting of the stockholders of this Company to be called for the purpose of considering the ratification of said sale and transfer as required by law; and be it further

RESOLVED, that subject to the foregoing conditions, the officers of this Company, be, and they are hereby, authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective

the provisions and intent of this resolution in accordance with law so as to fully and completely divest this company of all right, or claim, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this Company in and to said property to the said Anaconda Copper Mining Company; and be it further

RESOLVED, that the officers of this Company be, and they are hereby, specially authorized, empowered and directed to make such sale, transfer and conveyance above provided for as of any date which may be agreed upon by them and the officers of the Anaconda Copper Mining Company. The said Anaconda Copper Mining Company, as a condition to the sale aforesaid, to assume, carry out and fully discharge all of the obligations and liabilities of every kind and character, whether in contract or in tort, and whether now or hereafter enforceable against this Company; to enter into such contracts and agreements with the said Anaconda Copper Mining Company as may be necessary to close up the general business and affairs of this Company; giving and granting unto the said officers of this Company full power and authority to make, execute, acknowledge and deliver deeds of conveyance, assignments, transfers, stipulations or such other instruments as may be necessary to fully carry out the provisions and purposes of this resolution; and be it further

RESOLVED, that the proper officers of this

Company be and they are hereby, authorized to call a special meeting of the stockholders of this Company to meet at the principal office of this Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at 10 o'clock A. M., for the purpose of considering the foregoing transaction and ratifying the same; and that for the purpose of said meeting the Transfer Books of this Company close on the 4th day of May, A. D. 1910, at the hour of three o'clock, P. M., and re-open on the 28th day of May, A. D. 1910, at the hour of ten o'clock, A. M.

The written resignation of Mr. W. D. Thornton, as a Director and Vice President of the Company, was presented to the Board and duly accepted.

Mr. W. S. Harper was nominated to fill the vacancy caused by the resignation of Mr. Thornton as such director and Vice President; there being no other nominations, on motion, duly seconded, Mr. W. S. Harper was elected a member of the Board of Directors and Vice President of the Company, to serve in place of Mr. Thornton, and immediately took his seat as such Director and Vice President.

The written resignation of Mr. A. C. Carson, as a Director of the Company, was presented to the Board and was duly accepted.

Mr. J. D. Clarke was nominated to fill the vacancy caused by the resignation of Mr. Carson; there being no other nominations, on motion, duly seconded, Mr. J. D. Clarke was elected a member of the Board of Directors to serve in place of Mr.

Carson, and immediately took his seat as such Director.

There being no further business to come before the meeting, the same was, upon motion duly seconded and unaimously adopted, adjourned.

JOHN D. RYAN,

Chairman.

J. W. ALLEN,

Secretary.

Salt Lake City, Utah, April 25, 1910.

I hereby waive notice of the special meeting of the Board of Directors of the Alice Gold & Silver Mining Company, to be held at New York City, State of New York on the 27th day of April, 1910, and consent to any action that may be taken by the directors at said meeting or any adjournment thereof.

EDW. S. FERRY.

Witness:

WILLARD HAMER.

Minutes of a Special Meeting of the Stockholders of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of the Company, in the Utah Savings & Trust Company Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., at 10 o'clock, A. M.

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The following named stockholders, owning or representing the number of shares of the capital stock of the Company hereinafter set opposite their respective names, were persent in person or by proxy, filed with the Secretary, to-wit:

E. S. Ferry, in person, owning	100	Shares
Joe Richards, by D. Gay Stivers, proxy	300	"
Isabelle McQueeny, by Willard Hamer, substitute proxy	1,000	"
Lina H. Spear by Willard Hamer, substitute proxy	100	"
Henry C. Frank, by F. S. Richards, substitute proxy	200	"
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000	"
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200	"
Aikman, Mrs. N. Augusta " " " " "	200	"
Allen, Joseph W., by E. S. Ferry, proxy	115,098	"
Allen, Noman F., " " " " "	33	"
Bach, Anna B., Mrs. " " " " "	200	"
Benjamin, George C " " " " "	100	"
Bogle, John " " " " "	50	"
Boyd, Miss Margaret C " " " " "	100	"
Brown, Charlotte A " " " " "	75	"
Brown, Miss Mabel " " " " "	20	"
Brown, Miss Margaret " " " " "	20	"
Brown, Mrs. Margaret C. " " " " "	15	"
Brown, William C., Jr " " " " "	20	"
Carroll, Mrs. Julia F. " " " " "	100	"
Catlin, Ephrom, " " " " "	200	"
Chislett, Wm. " " " " "	250	"
Clarke, John D " " " " "	100	"
Collins, James V " " " " "	1,000	"
Collins, W. L. " " " " "	42	"
Conlon, Patrick " " " " "	100	"
Curtis, N. M. " " " " "	500	"
Driscoll, Dennis, " " " " "	200	"

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Durston, John H	by E. S. Ferry, proxy	500	"
Eames, Elizabeth Miss	" " " " "	200	"
Eising & Co., E.	" " " " "	100	"
Ferns, John	" " " " "	500	"
Fink, J. C.	" " " " "	10	"
Flannigan, Jerry	" " " " "	200	"
Force, Marion Mrs. S.	" " " " "	200	"
Fuller, Miss Rhoda	" " " " "	100	"
Gehrmann, Chas.	" " " " "	50	"
Gold, Meyer	" " " " "	100	"
Goldberg, David	" " " " "	100	"
Goodman, Milton F.	" " " " "	300	"
Goodman, Mrs. Sarah	" " " " "	200	"
Graves, S. R.	" " " " "	54	"
Gunniss, Mrs. Annie	" " " " "	200	"
Haight, Edward	" " " " "	100	"
Haley & Co., Caleb	" " " " "	200	"
Hall, Mrs. Ella B.	" " " " "	25	"
Harper, Walter S.	" " " " "	100	"
Harris, Samuel	" " " " "	100	"
Hayes, H. J.	" " " " "	54	"
Heidelsheimer, S.	" " " " "	200	"
Hess, Ferdinand	" " " " "	200	"
Howatson, Robert	" " " " "	25	"
Irvine, E. J.	" " " " "	25	"
Kirkpatrick, James	" " " " "	100	"
Knapp, John A.	" " " " "	400	"
Kringel, Ira C.	" " " " "	200	"
Love, William	" " " " "	100	"
Lukach, Isidor	" " " " "	100	"
Lyons, Michael	" " " " "	100	"
McConihe, A. Douglas	" " " " "	300	"



McCormick, J. E.	by E. S. Ferry, proxy	500	"
McGovern, James	" " " " "	200	"
McHugh, Thomas	" " " " "	100	"
Maas, Wm.	" " " " "	2,500	"
Macinder & Co., James	" " " " "	200	"
MacMillan, Mrs. Alice R.	" " " " "	1,400	"
Malcom & Coombe	" " " " "	100	"
Muldoon, Mrs. Martha J.	" " " " "	25	"
Morris, Sternbach & Co.	" " " " "	300	"
Newborg & Co.,	" " " " "	11,925	"
Newton, Mary M.	" " " " "	200	"
Oakes, T. F.	" " " " "	300	"
Ober, Maurice	" " " " "	800	"
Paine, Webber & Co.	" " " " "	425	"
Pease, Theodore Dennis	" " " " "	66	"
Reimel, Edward	" " " " "	400	"
Rhodes, F. B. F.	" " " " "	300	"
Robinson, E. George	" " " " "	1,600	"
Robinson, Maria Maud	" " " " "	1,800	"
Robinson, Mrs. Mary E.	" " " " "	176	"
Robinson, Miss Mary Elizabeth	" " " " "	1,750	"
Robinson, Nathaniel	" " " " "	1,600	"
Ryan, John D.	" " " " "	60,656	"
Salveson, Fred	" " " " "	75	"
Shearer, Charles T.	" " " " "	50	"
Shaley, Mrs. Mina B.	" " " " "	200	"
Shores, Arthur J.	" " " " "	300	"
Spencer, Chas. D.	" " " " "	350	"
Spratt, Thomas	" " " " "	100	"
Stokes, Mrs. Ada	" " " " "	650	"
Strong, A. C.	" " " " "	100	"

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Sutro Bros. & Co.,	by E. S. Ferry, proxy	200	"
Thornton, W. D.	" " " "	58,161	"
Turner, Mrs. Anna	" " " "	300	"
Turner, Christopher	" " " "	350	"
Valentine, W. S.	" " " "	100	"
Van Sant, O. B.	" " " "	200	"
Wagner, Wm.	" " " "	100	"
Weil, Harry S.	" " " "	100	"
Westheimer, N.	" " " "	1,200	"
White, Miss Mary	" " " "	20	"
Whiting, John C.	" " " "	145	"
Willenberg, Carl	" " " "	100	"
Wimpfheimer, Chas. A.	" " " "	1,000	"
Wooster, Mattie V.	" " " "	100	"
Wynne, W. E.	" " " "	200	"
Eliassof, Harry N.	" " " "	500	"
Gibson, Wm. H.	" " " "	2,400	"
Hungate, Mary	" " " "	50	"
Keaveny, James	" " " "	10	"
Lewisohn Bros.	" " " "	1,300	"
Lorton, Hattie A.	" " " "	100	"
Mayo, Edwin L.	" " " "	600	"
Peck, Thomas	" " " "	500	"
Tingle, Elizabeth	" " " "	200	"
William Tebbs	" " " "	100	"
Estate of Armitage			
Rhodes, deceased,	" " " "	142	"
Estate of Colonel			
Rhodes, deceased,	" " " "	333	"
Morris Eisenberg,	" " " "	1,000	"
Rhodes, Mrs. Mable	" " " "	7	"
Frances V. Emerson	" " " "	225	"

Mary E. Hutton	by E. S. Ferry, proxy	433	"
Ella T. Pearson	" " " " "	50	"
Wm. E. Wallace	" " " " "	50	"
Victor Day,	" " " " "	200	"
Joseph S. Baer in person, owning		300	"
J. R. Walker, in person, owning		2,110	"
Peter Geddes by Jos. R. Walker, proxy		3,100	"
W. C. Lewis,	By E. S. Ferry, proxy	500	"
H. Hobert Keeler	" " " " "	1,500	"
Alfred Clifford	" " " " "	500	"
Total		295,100	"

It appearing that there was represented at the meeting in person or by proxy, stockholders owning or representing a total of 295,100 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than a majority of the entire capital stock of the Company, the meeting was duly organized as follows:

On motion duly made and seconded, Mr. E. S. Ferry was nominated and elected Chairman of the meeting 295,100 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. Ferry took the chair.

On motion duly made and seconded, Mr. D. Gay Stivers, a suitable person, was elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavits of J. W. Allen, secretary of the Company, Blanche H. Newcomb, clerk of the "Salt Lake Telegram," a daily newspaper published in the City of Salt Lake, Utah,

and also by Mr. Joseph F. MacDonald, clerk of the "New York Times," a daily newspaper published in the City of New York, State of New York, that notice had been duly given by mailing and publication to the stockholders of the company, as required by the by-laws of the corporation.

Said affidavits were exhibited at the meeting, filed with the secretary, and are respectively in the following form:

State of New York,

County of New York, ss.:

J. W. ALLEN, being first duly sworn, deposes and says: That he is the secretary of the Alice Gold & Silver Mining Company, that acting under and by virtue of a resolution duly adopted by the board of directors of said company at a special meeting of said Board, held at the office of the Company, No. 42 Broadway, New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, at 12 o'clock M. affiant made out and caused the following notice of said meeting to be deposited in the United States Mail, enclosed in a suitable envelope, with postage prepaid thereon addressed and directed to each stockholder of record of the above named company, by his name and to his place of residence appearing upon the records of said company.

Affiant further says that acting under said resolution he gave instructions that a similar notice should be published daily for at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 5th day of May, A.

D., 1910, to the 27th day of May, A. D., 1910, in the "Salt Lake Telegram," a daily newspaper of general circulation, published at the City of Salt Lake, Salt Lake County, Utah, and also gave instructions that the said notice should be published at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 4th day of May, A. D., 1910, to the 27th day of May, A. D., 1910; said notice above referred to being in the following form:

**"NOTICE OF SPECIAL MEETING OF THE  
STOCKHOLDERS**

**of**

**ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings and Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all of the property and assets of every kind and character owned or possessed by

the Alice Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the  
ALICE GOLD & SILVER MINING COMPANY.

J. W. ALLEN,

Secretary."

(Signed) J. W. ALLEN.

Subscribed and sworn to before me, this 19th day of May, A. D., 1910.

HENRY MICHAELIS.

Notary Public for the State of New  
(Notarial York, residing at New York City, N. Y.

Seal) My Commission expires March 30,  
1912.

State of New York,

County of New York, ss.

JOSEPH F. MACDONALD, being first duly sworn, says: That he is the principal clerk of the "New York Times," a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 4th day of May, A. D., 1910, up to and including the

27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May 19th, 1910, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the 27th day of May, A. D., 1910, as follows:

**NOTICE OF SPECIAL MEETING OF THE  
STOCKHOLDERS OF  
ALICE GOLD AND SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the

Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company

to the said Anaconda Copper Mining Company in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the Alice Gold & Silver Mining Company,

J. W. ALLEN,  
Secretary."

(Signed) JOSEPH F. MACDONALD.

Subscribed and sworn to before me this 20th day of May A. D., 1910.

(Signed) HUGH C. PARKER,

Notary Public, Kings Co., Registered  
(Notarial in New York Co. 2115.

Seal) Notary Public for Kings County, N. Y.,  
residing at Brooklyn, N. Y.

My Commission Expires March 30, 1912.  
State of Utah,  
County of Salt Lake, ss.

BLANCHE H. NEWCOMB, being first duly sworn, says: That she is the principal clerk of the "Salt Lake Telegram," a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 5th day of May, A. D. 1910, up to and including the



27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, inclusive.

**"NOTICE OF SPECIAL MEETING OF THE  
STOCKHOLDERS**

**of**

**ALICE GOLD & SILVER MINING COMPANY,  
Salt Lake City, Utah, May 2, 1910.**

To the Stockholders of the

Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered in to between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice

Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the  
ALICE GOLD & SILVER MINING COMPANY,  
J. W. ALLEN,  
Secretary."

(Signed) BLANCHE H. NEWCOMB,  
Subscribed and sworn before me, this 27th day  
of May, A. D., 1910.

(Signed) H. J. SCHULTZ,  
Notary Public for the State of Utah,  
(Notarial Residing at Salt Lake City, Utah.

Seal) My Commissions expires February  
10th, 1914.

Thereupon the chairman appointed Mr. D. Gay Stivers and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the Secretary, and the said committee, after an examination of said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, representing 295,100 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, are hereinbefore spread on the minutes of said meeting.

On motion duly made, seconded and adopted, the report of the committee was accepted.

Thereupon, the said proxies were exhibited to

the meeting, and, after examination, were filed by the Secretary in his office.

The chairman then stated to the meeting the purposes for which the same had been called, and the secretary read to the meeting the minutes of the Director's meeting held on the 27th day of April, A. D., 1910, at the office of the Company, No. 42 Broadway, New York City, New York.

On motion, duly made, seconded and adopted, the said proceedings of the said directors, as the same appear of record at said meeting were ratified, approved and confirmed, and made the act of the stockholders of this corporation.

WHEREUPON, the following resolution was introduced:

WHEREAS, at a special meeting of the Board of Directors of this company, held at the office of the Company, 42 Broadway, New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, it was decided to call a special meeting of the stockholders of this company on the 27th day of May, A. D., 1910, for the purpose of considering a proposition to ratify, approve and confirm a certain contract which the officers of this corporation were authorized by the Board of Directors to enter into with the officers of the Anaconda Copper Mining Company, providing for a sale, transfer and conveyance of all of the property and assets owned or possessed by this company, of every kind and character, real, personal and mixed, corporal and incorporeal, in law and in equity, for thirty thousand (30,000) shares

of the capital stock of the Anaconda Copper Mining Company, said contract of sale to be made subject to the ratification, approval and authorization of the stockholders of this corporation at this meeting, as required by law, and

WHEREAS, acting under and by virtue of the authority so conferred by said resolution, the following agreement and contract of sale has been duly entered into by the officers of this company on behalf of this company with the officers of the Anaconda Copper Mining Company on behalf of the last named corporation; be it

RESOLVED, that the acts of the officers of this corporation in entering into the following agreement and contract of sale, to-wit:

THIS AGREEMENT, made and entered into this 19th day of May, A. D., 1910, between the Alice Gold & Silver Mining Company, a corporation organized under the laws of the State of Utah, hereinafter designated as the "FIRST PARTY," and the ANACONDA COPPER MINING COMPANY, a corporation organized under the laws of the State of Montana, hereinafter designated as the "second party"

WITNESSETH:

That subject to the conditions and agreements hereinafter set forth, the first party hereby agrees to sell and does hereby sell, for and in consideration of thirty thousand (30,000) shares of the capital stock of the second party, full paid, at par and non-assessable, to be issued and delivered by the second party to the first party, or to such

person or persons as the first party may hereafter designate; and the second party hereby agrees to purchase, and does hereby purchase, upon the conditions aforesaid, all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, reduction works, and all other works, machinery, tools and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also, all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other works and rights of way therefor.

Also, all lands, easements and other real estate, improved and unimproved, to the first party belonging, and wherever situate, lying or being, together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also, all right, title and interest whatsoever, legal or equitable, of the first party, of in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture, supplies, equipment, stock on hand, business, good will and other property whatsoever, and wherever situate, lying or being.

Also, all bills receivable, accounts, money on hand, moneys due or to become due by reason of any past sales or transactions, and all ores, minerals and metals which have been mined; all

matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining; all precipitates, and all argentiferous mud ready to be melted or parted, owned or possessed by said first party.

Also, any and all other properties, real personal and mixed corporeal and incorporeal, legal and equitable, choses in action, and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested or entitled to become interested.

Said first party does also give, and grant unto said second party the right to inspect, examine, and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of said first party.

The foregoing sale and transfer is made subject to the following conditions:

(a) Said second party agrees to take over, and does hereby take over, the said property of the said first party as of the 30th day of April, 1910, and agrees to carry out and fully perform and discharge all contracts, obligations and liabilities of every kind, character and description, whether in contract or in tort, and whether now or hereafter enforceable against the first party, and to undertake to and fully carry out and completely perform all valid executory provisions of any contract or contracts which may exist at the date of

the transfer and delivery of all of the property and assets of said first party to said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements heretofore granted, made or given by the said first party or its predecessors in interest, and also to all vested rights obtained by others against said first party or its predecessors in interest by legal proceedings or by adverse possession or user.

(c) All taxes, liens and assessments upon, or any part, of the property sold, or against the first party, whether due and payable, or to become due and payable, shall be paid by said second party hereto.

(d) Said first party agrees to make, execute and deliver, through its proper officers, duly authorized, any and all deeds, conveyances or other instruments necessary or proper for carrying out this agreement according to its true intent and meaning and said second party agrees to make, execute and deliver such undertakings, releases, stipulations or other instruments as may be necessary on its part to carry out all of the terms and provisions of this agreement according to its true intent and meaning.

(e) It is expressly understood and agreed that the foregoing contract of sale and transfer is made subject to the confirmation and ratification thereof by the stockholders of the said first party at a special meeting of said stockholders, called for that purpose to meet at the principal office of the Company in the Utah Savings &

Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D., 1910, it being the intention of this agreement to sell and convey all of the property and assets specified in this contract subject only to the conditions herein expressed and the said ratification and confirmation of said contract by the said stockholders of said first party.

IN WITNESS WHEREOF, the parties hereto have caused their corporate names to be hereunto signed by their respective Presidents, and their corporate seals to be hereunto affixed, and attested by their respective Secretaries, the day and year in this instrument first above written.

(Signed)

ALICE GOLD & SILVER MINING CO.,

“ By JOHN D. RYAN, It's President.

Attest:

J. W. ALLEN, Its Secretary.

ANACONDA COPPER MINING CO.,

(Seal)

By B. B. THAYER,

Its President.

Attest:

C. F. KELLEY,

Its Secretary.

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, N. E. Bryans, a Notary Public, in and for said County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold & Silver Mining Company, the cor-



poration that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

Notary Public for the State of New  
(SEAL) York, residing at New York City, N. Y.

My commission expires March 30, 1911."

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to be to be the President of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

Notary Public for the State of New  
(SEAL) York, residing at New York City, N. Y.

My commission expires March 30, 1911.  
be, and the same are hereby, in all respects ratified, approved, confirmed and made the acts of this corporation; and be it further

RESOLVED, that the foregoing agreement and

contract of sale is in all of its terms, stipulations, provisions and agreements hereby ratified, approved, confirmed and made the act and deed of this corporation, and that the Board of Directors and the proper officers of this corporation be, and they are hereby authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective the provisions and intent of this resolution and agreement and contract of sale, in accordance with law, so as to fully and completely divest this company of all right, or claim of right, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this company in and to said property to the said Anaconda Copper Mining Company, upon the payment by said Anaconda Copper Mining Company to the credit of this company, of thirty thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company: and be it further

RESOLVED, that the officers of this company, be, and they are hereby, authorized, empowered and directed to make, execute, acknowledge and deliver such deeds of conveyance, assignments, transfers, stipulations or other instruments as may be necessary to fully and completely carry out the provisions and purposes of said agreement and contract of sale.

On motion duly made and seconded that the said resolution be adopted, the following stockholders voted in favor of said resolution:

E. S. Ferry, in person, owning	100	Shares
Joe Richards, by D. Gay Stivers, proxy	300	"
Isabelle McQueeney, by Willard Hamer, substitute proxy	1,000	"
Lina H. Spear by Willard Hamer, substitute proxy	100	"
Henry C. Frank, by F. S. Richards, substitute proxy	200	"
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000	"
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200	"
Aikman, Mrs. N. Augusta " " " " "	200	"
Allen, Joseph W., " " " " "	115,098	"
Allen, Norman F., " " " " "	33	"
Bach, Anna B., Mrs. " " " " "	200	"
Benjamin, George C " " " " "	100	"
Eagle, John " " " " "	50	"
Boyd, Miss Margaret C " " " " "	100	"
Brown, Charlotte A " " " " "	75	"
Brown, Miss Mabel " " " " "	20	"
Brown, Miss Margaret " " " " "	20	"
Brown, Mrs. Margaret C. " " " " "	15	"
Brown, William C., Jr " " " " "	20	"
Carroll, Mrs. Julia F. " " " " "	100	"
Catlin, Ephron, " " " " "	200	"
Chislett, Wm. " " " " "	250	"
Clarke, John D. " " " " "	100	"
Collins, James V. " " " " "	1,000	"
Collins, W. L. " " " " "	42	"
Conlon, Patrick, " " " " "	100	"
Curtis, N. M. " " " " "	500	"
Driscoll, Dennis, " " " " "	200	"

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Durston, John H	by E. S. Ferry, proxy	500	"
Eames, Elizabeth Miss	" " " "	200	"
Eising & Co., E.	" " " "	100	"
Ferns, John	" " " "	500	"
Fink, J. C.	" " " "	10	"
Flannigan, Jerry	" " " "	200	"
Force, Marion Mrs. S.	" " " "	200	"
Fuller, Miss Rhoda	" " " "	100	"
Gehrmann, Chas.	" " " "	50	"
Gold, Meyer	" " " "	100	"
Goldberg, David	" " " "	100	"
Goodman, Milton F.	" " " "	300	"
Goodman, Mrs. Sarah	" " " "	200	"
Graves, S. R.	" " " "	24	"
Gunniss, Mrs. Annie	" " " "	200	"
Haight, Edward	" " " "	100	"
Haley & Co., Caleb	" " " "	200	"
Hall, Mrs. Ella B.	" " " "	25	"
Harper, Walter S.	" " " "	100	"
Harris, Samuel	" " " "	100	"
Hayes, H. J.	" " " "	54	"
Heidelsheimer, S.	" " " "	200	"
Hess, Ferdinand	" " " "	200	"
Howatson, Robert	" " " "	25	"
Irvine, E. J.	" " " "	25	"
Kirkpatrick, James	" " " "	100	"
Knapp, John A.	" " " "	400	"
Kringel, Ira C.	" " " "	200	"
Love, William	" " " "	100	"
Lukach, Isidor	" " " "	100	"
Lyons, Michael	" " " "	100	"
McConihe, A. Douglas	" " " "	300	"

McCormick, J. D.	by E. S. Ferry, proxy	500	"
McGovern, James	" " " " "	200	"
McHugh, Thomas	" " " " "	100	"
Maas, Wm.	" " " " "	2,500	"
Macinder & Co., James	" " " " "	200	"
MacMillan, Mrs. Alice R.	" " " " "	1,400	"
Malcom & Coombs	" " " " "	100	"
Muldoon, Mrs. Martha J.	" " " " "	25	"
Morris, Sternbach & Co.	" " " " "	300	"
Newborg & Co.,	" " " " "	11,925	"
Newton, Mary M.	" " " " "	200	"
Oakes, T. F.	" " " " "	300	"
Ober, Maurice	" " " " "	800	"
Paine, Webber & Co.	" " " " "	425	"
Pease, Theodore Dennis	" " " " "	66	"
Reimel, Edward	" " " " "	400	"
Rhodes, F. B. F.	" " " " "	300	"
Robinson, E. George	" " " " "	1,600	"
Robinson, Maria Maud	" " " " "	1,800	"
Robinson, Mrs. Mary E.	" " " " "	176	"
Robinson, Miss Mary Elizabeth	" " " " "	1,750	"
Robinson, Nathaniel	" " " " "	1,600	"
Ryan, John D.	" " " " "	60,656	"
Salveson, Fred	" " " " "	75	"
Shearer, Charles T.	" " " " "	50	"
Shaley, Mrs. Mina B.	" " " " "	200	"
Shores, Arthur J.	" " " " "	300	"
Spencer, Chas. D.	" " " " "	350	"
Spratt, Thomas	" " " " "	100	"
Stokes, Mrs. Ada	" " " " "	650	"
Strong, A. C.	" " " " "	100	"

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Sutro Bros. & Co.,	by E. S. Ferry, proxy	200	"
Thornton, W. D.	" " " "	58,161	"
Turner, Mrs. Anna	" " " "	300	"
Turner, Christopher	" " " "	350	"
Valentine, W. S.	" " " "	100	"
Van Sant, O. B.	" " " "	200	"
Wagner, Wm.	" " " "	100	"
Weil, Harry S.	" " " "	100	"
Westheimer, N.	" " " "	1,200	"
White, Miss Mary	" " " "	20	"
Whiting, John C.	" " " "	145	"
Willenberg, Carl	" " " "	100	"
Wimpfheimer, Chas. A.	" " " "	1,000	"
Wooster, Mattie V.	" " " "	100	"
Wynne, W. E.	" " " "	200	"
Eliassof, Harry N.	" " " "	500	"
Gibson, Wm. H.	" " " "	2,400	"
Hungate, Mary	" " " "	50	"
Keaveny, James	" " " "	10	"
Lewisohn Bros.	" " " "	1,300	"
Lorton, Hattie A.	" " " "	100	"
Mayo, Edwin L.	" " " "	600	"
Peck, Thomas	" " " "	500	"
Tingle, Elizabeth	" " " "	200	"
William Tebbs	" " " "	100	"
Estate of Armitage			
Rhodes, deceased,	" " " "	142	"
Estate of Colonel			
Rhodes, deceased,	" " " "	333	"
Morris Eisenberg,	" " " "	1,000	"
Rhodes, Mrs. Mable	" " " "	7	"
Frances V. Emerson	" " " "	225	"

Mary E. Hutton	by E. S. Ferry, proxy	433	"
Ella T. Pearson	" " " " "	50	"
Wm. E. Wallace	" " " " "	50	"
Victor Day,	" " " " "	200	"
W. C. Lewis	" " " " "	500	"
H. Hobert Keeler	" " " " "	1,500	"
Alfred Clifford	" " " " "	500	"

And the following stockholders voted against said resolution:

Joseph S. Baer in person, owning	300	"
J. R. Walker, in person, owning	2,110	"
Peter Geddes by Jos. R. Walker, proxy	3,100	"

It appearing that of the entire capital stock represented at said meeting, 289,590 shares have been voted in favor of said resolution, and the same constituting more than a majority of all of the issues capital stock of the corporation, the said resolution was declared duly carried by the chairman and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and adopted, said meeting was adjourned.

(Signed) E. S. FERRY,  
Chairman.

(Signed) D. GAY STIVERS,  
Secretary.

State of Utah,  
County of Salt Lake, ss.

E. S. Ferry, being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of

*Anaconda Copper Mining Co. et al.* 651

the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D., 1910, that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) E. S. FERRY

Subscribed and sworn to before me, this 27th day of May, A. D. 1910.

(Signed) HARVEY J. JONES,

Notary Public for State of Utah,  
residing at Salt Lake City, Utah.

My Commission expires March 8th, 1912.

State of Utah,

County of Salt Lake, ss.

On this 27th day of May, A. D., 1910, before me, Harvey J. Jones, a Notary Public in and for said County and State personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day



and year in this certificate first above written.

(Signed) HARVEY J. JONES,  
Notary Public for the State of Utah,  
residing at Salt Lake City, Utah.

My Commission Expires March 8, 1912.

State of Utah,

County of Salt Lake.

D. GAY STIVERS, being first duly sworn, says upon oath: that he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D., 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) D. GAY STIVERS

Subscribed and sworn to before me, this 27th day of May, A. D., 1910.

(Signed) HARVEY J. JONES,  
Notary Public for the State of Utah,  
residing at Salt Lake City, Utah.

My Commission Expires March 8, 1912.

State of Utah,

County of Salt Lake, ss.

On this 27th day of May, A. D., 1910, before me, Willard Hamer, a Notary Public in and for said

County and State, personally appeared D. GAY STIVERS, known to me to be the person whose name is subscribed to the foregoing minutes of the special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,  
Notary Public for the State of Utah,  
Residing at Salt Lake City, Utah.  
My Commission expires May 16, 1913.

We, the undersigned, stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the Stockholders of said company, held on the 27th day of May, A. D. 1910, hereinbefore recorded, do hereby certify that the foregoing minutes of the said meeting are full, true and correct; and we, and each of us did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this 27th day of May, A. D., 1910, hereunto subscribed our names, and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

(Signed) E. S. FERRY 100 shares.  
“ E. S. FERRY, proxy 285,890 shares.  
“ Y. T. RICHARDS “ 2,200 shares.  
“ WILLARD HAMER “ 1,100 shares.  
“ D. GAY STIVERS “ 300 shares.

OFFICE OF THE ALICE GOLD AND SILVER  
MINING COMPANY,

Room No. 503, Utah Savings & Trust Building.  
Salt Lake City, Utah, May 27, 1910.

We, the undersigned, the committee designated by the Chairman of the special meeting of the stockholders of the Alice Gold and Silver Mining Company, held at the principal office of said Company, at Salt Lake City, State of Utah, on Friday, May 27th, 1910, to examine and report upon the number and correctness of the proxies filed with the Secretary, and upon the number of shares of the capital stock of said Company present or properly represented at the meeting, after examining each and all of said proxies, do hereby respectfully report that we find that there were present and properly represented at the meeting 295,100 shares of the capital stock of said Company, constituting a quorum, and that each and all of said proxies are regular, correct and satisfactory.

(Signed) D. GAY STIVERS,

(Signed) WILLARD HAMER.

Complainants' Exhibit "LL."

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, hereby make, constitute and appoint W. D. THORNTON, E. S. FERRY and C. F.

KELLEY, or any one of them, or such person or persons as they, or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to vote upon the stock of the ALICE GOLD AND SILVER MINING COMPANY, a Utah corporation, according to the number of votes that the undersigned would be entitled to cast if then personally present at a special meeting of the stockholders of the said Company, to be held at its principal office in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D. 1910, at 10 o'clock, A. M., and at all adjournments of said meeting, for the purposes for which said meeting has been called by resolution of the Board of Directors adopted on April 27th, A. D. 1910, namely:

First: For the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold and Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property of every kind and character owned or possessed by the Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold and Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company;

Second: For the transaction of any other business that may properly come before said meeting:

IN WITNESS WHEREOF, I hereunto set my hand and seal this                      day of May, A. D. 1910.  
Witness:

-----  
----- (L. S.)

**Exhibit MM.**

**RICHARDS, RICHARDS & FERRY,**

Counselors at Law

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

June 1, 1910.

Mr. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,  
42 Broadway, New York City, N. Y.

Dear Sir:

This is to acknowledge the receipt of all of the proxies for the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company referred to in your telegrams of recent dates.

The special meeting was held and the sale of the property confirmed by majority vote of the stock represented at the meeting according to the plan outlined. There was a formal objection made to the sale by J. R. Walker and others. He represented some six thousand shares. The principal ground for their objection was that the Alice Company had no legal right to compel the stockholders

*Anaconda Copper Mining Co. et al.* 657  
to take in payment for their stock shares in another company.

Very truly yours,  
(Signed) EDW. S. FERRY.

Form 260

THE WESTERN UNION TELEGRAPH  
COMPANY,

Incorporated.

24,000 Offices in America. Cable service to all the  
World.

Robert C. Clowry, President and General Manager

Receiver's No	Time filed	Check
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SEND the following message subject to the terms  
on back hereof, which are hereby agreed to.

May 27, 1910.

Edward S. Ferry,

%Richards, Richards & Ferry,

Salt Lake City, Utah.

Proxy name of Walter C. Lewis five hundred  
shares mail.

J. W. ALLEN.

May 27, 1910.

Edward S. Ferry, Esq.,

Salt Lake City, Utah.

Dear Sir:

I enclose herewith confirmation of my telegram to you today also proxy of Walter C. Lewis for 500 shares of Alice stock.

Yours very truly,

JWA/W

Secretary.

RICHARDS, RICHARDS &amp; FERRY,

Counselors at Law.

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

May 27, 1910.

MR. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,  
42 Broadway, New York City, N. Y.

Dear Sir:

Enclosed I hand you proxy of William H. Gibson for 7,600 shares requested in your letter and telegram to Mr. Ferry, advising him to vote the new proxy for 2400 shares. The proxies have been left in Mr. Ferry's office, together with the minutes of the special meeting of the stockholders held this day, copies of the report of the committee on proxies, the minutes of the special meeting of the Board of Directors, held in New York, April 27, 1910, the original affidavits of yourself, principal clerk of the Salt Lake Telegram and the principal clerk of the New York Times as to the mailing and publication of notice of special stockholder's meeting, which are embodied in the original minutes sent you herewith.

Very truly yours,

(Signed) D. GAY STIVERS.

R. P.—

RICHARDS, RICHARDS &amp; FERRY

Counselors at Law.

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry.

May 27, 1910.

Mr. J. W. Allen,

Secretary Alice Gold & Silver Mg. Co.,

Room 2000, 42 Broadway,

New York City, New York.

Dear Sir:—

Enclosed please find letters from Isaac Blum and N. A. Williams, with carbon copies of letters sent to them in reply.

I also enclose you original minutes of the special meeting of the stockholders held this day. I wired Mr. Kelly that there were 287,590 shares voted in favor of the proposition of sale, and 5,510 against. The total vote in favor of the sale should be 289,590, as I did not find the telegram relative to the H. H. Keeler stock, 1500, and Alfred Clifford, 500. They were included in the meeting. If Mr. Kelly has not left New York, kindly show this letter to him, with enclosures, and if so, retain for your record.

I also enclose you a letter submitted by Joseph R. Walker and Peter Geddes. Their vote was recorded against the proposition of sale, but this letter, being in the nature of an argument, I told them would have to be referred to the Secretary for submission to the Board of Directors.

The minutes of today's meeting will be filed in the office of the County Clerk and Recorder of Silver Bow County, Montana, as soon as I return



to Butte, either Saturday or Monday.

I also enclose you report of the committee on proxies.

Yours very truly,

(Signed) D. GAY STIVERS.

Form 2289

**NIGHT LETTER  
THE WESTERN UNION TELEGRAPH  
COMPANY**

**Incorporated**

**25,000 Offices in America Cable Service to all the  
World.**

**Robert C. Clowry, President. Belvidere Brooks,  
General Manager.**

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

S. Ferry,

May 26, 1910.

%Richards, Richards & Ferry.

Salt Lake City, Utah.

Following proxies aggregating five hundred seventy-five shares mailed; two in name of Estate of the late Armitage Rhodes one hundred forty-two shares; Estate Colonel Rhodes, three hundred thirty-three; William Tebbs, one hundred.

J. W. ALLEN.

May 26, 1910.

Edward S. Ferry, Esq.,

% Messrs. Richards, Richards & Ferry,

Salt Lake City, Utah.

Anaconda Copper Mining Co. et al. 661

Dear Sir:

I am enclosing you herewith confirmation of my "Night Letter" to you today also proxies aggregating 575 shares, in the following names:

Estate of the Late Armitage Rhodes	100 shs
" " " " " "	42 "
Estate Colonel Rhodes	333 "
William Tebbs	100 "

---

575 shs

Yours very truly,

JWA/W

Secretary.

May 25, 1910.

Edward S. Ferry, Esq.,  
Salt Lake City, Utah.

Dear Sir:

Enclosed please find confirmation of my "Night Letter" to you today; also proxies in the names of H. Hobart Keeler, 1500 shares, and Alfred Clifford, 500 shares, mentioned therein.

Yours very truly,

Secretary.

JWA/W

Form 2289

NIGHT LETTER.

THE WESTERN UNION TELEGRAPH  
COMPANY.

Incorporated

25,000 Offices in America. Cable Service to all the  
World.

Robert C. Clowry, President. Belvidere Brooks,  
General Manager.

661

Receiver's No	Time filed	Check
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SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

Edward S. Ferry,

%Richards, Richards & Ferry,  
Salt Lake City, Utah.

Following proxies aggregating two thousand shares mailed: H. Hobert Keeler Fifteen hundred shares; Alfred Clifford five hundred shares.

J. W. ALLEN.

RICHARDS, RICHARDS & FERRY  
Counselor at Law  
Salt Lake City, Utah.

Franklin S. Richards,  
Joseph T. Richards  
Edward S. Ferry

May 25, 1910.

MR. J. W. ALLEN,

Secretary Alice Gold & Silver Mining Company,  
42 Broadway, New York City, N. Y.

Dear Sir:

Your registered package of May 21, enclosing proxies to be voted at the annual meeting, aggregating 288,350 shares, as per list therewith enclosed, was duly received. I am also in receipt of your telegram of May 24, which I repeat for confirmation, as follows:

"Following proxy aggregating 3185 shares mailed. Francis V. Emerson 225, Mary E. Hutton 433, Ella T. Pearson 50, William E. Wallace 50,

*Anaconda Copper Mining Co. et al.* 663  
William H. Gibson 2400. Substitute Gibsons for  
proxy originally given. Please return original to  
me."

I shall return the original Gibson proxy as re-  
quested after the meeting on Friday.

I enclose herewith a letter addressed to you,  
which is an inquiry from H. E. Radeker. I as-  
sumed it to be in relation to the coming meeting,  
and I therefore took the liberty of opening it.

Very truly yours,

(Signed) EDW. S. FERRY.

May 24, 1910.

Edward S. Ferry, Esq.,

%Messrs. Richards, Richards & Ferry,

Salt Lake City, Utah.

Dear Sir:

Enclosed herewith please find confirmation of  
my "Night Letter" to you today, also proxies ag-  
gregating 3158 shares mentioned therein.

Yours very truly,

JWA/W

Secretary.

Form 2289

**NIGHT LETTER.**

**THE WESTERN UNION TELEGRAPH  
COMPANY.**

**Incorporated**

**25,000 Offices in America. Cable Service to all the  
World.**

**Robert C. Clowry, President. Belvidere Brooks,  
General Manager.**

Receiver's No	Time filed	Check
---------------	------------	-------

SEND the following NIGHT LETTER subject to the terms on back hereof which are hereby agreed to.

May 24, 1910

Edward S. Ferry,  
%Richards, Richards & Ferry,  
Salt Lake City, Utah.

Following proxies aggregating thirty-one hundred fifty-eight shares mailed. Francis V. Emerson two hundred twenty-five shares; Mary E. Hutton, four hundred thirty-three; Ella T. Pearson, fifty; Wm. E. Wallace, fifty; Wm. H. Gibson, twenty-four hundred. Substitute Gibson's for proxy originally given. Please return original to me.

J. W. ALLEN.

Form 260

THE WESTERN UNION TELEGRAPH  
COMPANY,  
Incorporated

24,000 Offices in America. Cable Service to all the  
World.

Robert C. Clowery, President and  
General Manager.

Receiver's No	Time filed	Check
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SEND the following message subject to the terms on back hereof, which are hereby agreed to.

New York May 23, 1910.

E. S. Ferry  
Utah Savings & Trust Bldg.  
Salt Lake, Utah.

*Anaconda Copper Mining Co. et al.* 665

Sending tonight following proxies: Thousand shares Maurice Isenberg; seven shares Mabel Rhodes.

J. W. ALLEN.

(Charge Alice Gold & Silver Mining Co.)

May 21, 1910.

Mr. E. S. Ferry,  
Salt Lake City, Utah.

Dear Sir:

I enclose you herewith proxies to be voted at the annual meeting, aggregating 288,350 shares, as per enclosed list. Please acknowledge receipt. If any more proxies come in I shall send them to you promptly.

Yours very truly,

Secretary.

JWA/W

**Exhibit NN.**

MINUTES of a Special Meeting of the BOARD OF DIRECTORS of the ALICE GOLD AND SILVER MINING COMPANY, held at the office of the Company, 42 Broadway, New York City, New York, on Wednesday, the 12th day of April, A. D. 1911, at 12:30 o'clock p. m.

**PRESENT:**

John D. Ryan,  
John D. Clarke,  
J. W. Allen

**ABSENT:**

E. S. Ferry,  
W. S. Harper.

The following waiver of notice and consent to

holding the meeting was signed by the Directors present:

We, the undersigned, Directors of the ALICE GOLD AND SILVER MINING COMPANY, do hereby severally waive notice of the Special Meeting of the Directors of said Company; and do hereby consent to the holding of said meeting at the office of said Company, 42 Broadway, New York City, New York, on Wednesday, the 12th day of April, A. D., 1911, at the hour of 12:30 o'clock p. m. and to the transaction thereat of any and all business which may properly come before said meeting to the same effect as if said meeting had been regularly called and due notice thereof given to all concerned.

(Signed) JOHN D. RYAN

“ JOHN D. CLARKE

“ J. W. ALLEN

A written waiver of notice and consent to the holding of the meeting, signed by E. S. Ferry and W. S. Harper, was presented to the meeting, and ordered filed with the Secretary.

The meeting was duly organized, Mr. John D. Ryan, the President of the Company, acting as Chairman of the meeting, and Mr. J. W. Allen, Secretary of the Company, acting as Secretary thereof.

The purpose of the Meeting was stated by the Chairman.

Whereupon, the following resolution was introduced, and on motion duly seconded, was unanimously adopted, to wit:

WHEREAS, all claims and demands against the Alice Gold and Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and

WHEREAS, it is deemed to the best interests of the Stockholders of this corporation that the same be dissolved; Now, Therefore, be it

RESOLVED, that this corporation be dissolved as speedily as possible, and that a Special meeting of the stockholders of this corporation be called for the purpose of submitting a proposition to dissolve this corporation, said meeting to be held on Monday, the 8th day of May, A. D. 1911, at the principal office of said company, in the Utah Savings & Trust Building, in the City of Salt Lake, County of Salt Lake, State of Utah, at ten o'clock A. M. of said day, and that the Secretary of this Company be, and he is hereby, authorized and directed to prepare and mail to the several stockholders of this corporation a proper notice of said meeting, and to cause the same to be published in the Salt Lake Tribune, a daily newspaper published in the City of Salt Lake, County of Salt Lake, State of Utah, and a similar notice to be published in the "New York Times," a daily newspaper published in New York City, New York, for a period of at least three weeks prior to the date of holding the same.

BE IT FURTHER RESOLVED, that the transfer books of this Company close on Friday, the 21st day of April, A. D., 1911, at the hour of 3:00



o'clock P. M., and reopen on Tuesday, the 9th day of May, A. D. 1911, at the hour of 10:00 o'clock a. m.

There being no further business to come before said meeting, the same was, upon motion duly seconded and unanimously adopted, adjourned.

(Signed) JOHN D RYAN

(Signed) J. W. ALLEN

Chairman.

Secretary.

MINUTES of a Special Meeting of the stockholders of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of said Company in the Utah Savings & Trust Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D., 1911, at 10:00 o'clock a. m.

The following named stockholders, owning the number of shares of the capital stock of the company hereinafter set opposite their respective names, were present in person or represented through proxies filed with the secretary, to-wit:

E. S. Ferry in person				100 shares
F.S.Bascom by E.S.Ferry and L.O.Evans, proxies				122
Anna Kate Adams	"	"	"	25
Edith Adams	"	"	"	25
John A. Knapp	"	"	"	400
Edwin G. Wooley, Jr.	"	"	"	200
Caroline Adler	"	"	"	200
C. R. Agnew	"	"	"	200
Joseph W. Allen	"	"	"	115,098
Anna B. Bach	"	"	"	200
Simon Bank	"	"	"	10
Barnes Brothers	"	"	"	100

Helena L. Beebe by E. S. Ferry & L. O. Evans, prox.	200
E. H. Bennett (Est.)	200
Maier Berliner	300
Emily C. Berthet	1,400
Kate M. Blindauer	25
John Bogle	50
Meyer Gold	100
Corinne I. Clarke	10
Victor Day	200
Margaret C. Boyed	100
Charlotte A. Brown	75
Ernest W. Brown	3,800
Mabel Brown	20
Margaret Brown	20
Margaret C. Brown	15
William Brown (C) Jr.	20
Charles Buttrick	300
Stephen W. Carey	100
Ephron Catlin	200
William Chislett	250
John D. Clarke	100
Juliette F. Clarke	10
Alfred Clifford	500
W. L. Collins	42
Patrick Conlon	100
John J. Connley	25
N. N. Curtis (Est.)	500
The Daniel Inv. Co.	200
William Henry Dennis	50
John Douglas	100
Dennis Driscoll	200
Emanuel Eising	100

Rhoda Fuller by E. S. Ferry and L. O. Evans, proxies	100
Harry N. Eliassop	500
Charles Gehrmann	50
Stanley Gifford	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunniss	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harris	1,000
H. J. Hayes	54
S. Heidelheimer	200
Ferdinand Hess	200
A. J. Huneke	100
H. Hobart Keeler	1,500
James Kirkpatrick	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Mchael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Stembach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10

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Ada Phipps	by E. S. Ferry and L. O. Evans, proxies	100
Chas. N. Pollack	" " "	1,500
Edward Reimle	" " "	400
F. B. F. Rhodes	" " "	300
Mabel Rhodes	" " "	7
Francis T. Robinson	" " "	1,600
Frederick A. Robinson	" " "	1,600
Maria M. Robinson	" " "	1,800
Mary E. Robinson	" " "	25
Mary Elizabeth Robinson	" " "	1,800
Nathaniel Robinson	" " "	1,300
John D. Ryan	" " "	60,656
C. T. Shearer	" " "	50
Charles D. Spencer	" " "	350
Thomas Spencer	" " "	100
Frank S. Stevens (Est.)	" " "	500
A. C. Strong	" " "	100
W. D. Thornton	" " "	58,161
Elizabeth Tingle	" " "	200
Anne Turner	" " "	300
Christopher Turner	" " "	350
W. J. Valentine	" " "	100
William Wagner	" " "	100
Werner & Brown	" " "	600
Sarah W. West	" " "	163
Nathan Westheimer (Est.)	" " "	900
Mary White	" " "	20
Carl Willenberg	" " "	100
Chas. A. Wimpfheimer	" " "	1,000
Mattie V. Wooster	" " "	100

Annie D. Young by E. S. Ferry & L. O. Evans, prox.	100
John List Crawford       "       "       "	2,000
James Brennan           "       "       "	200
Pat Conlon               "       "       "	100
E. I. Irvine               "       "       "	25
Caleb Haley & Co.       "       "       "	200
J. J. Flanigan           "       "       "	200
L. M. Rumsey             "       "       "	100
Samuel Stein             "       "       "	10
Mina B. Sheley          "       "       "	200
Maurice Ober            "       "       "	750
Henry C. Frank          "       "       "	200
P. Kunz, Jr.             "       "       "	200
L. W. Lukach             "       "       "	100
William Mass             "       "       "	2,700
Frederick Numbaum      "       "       "	300
F. C. Westervelt        "       "       "	1,000
C. B. Van San            "       "       "	300
A. J. Shores             "       "       "	300
Harry S. Weil           "       "       "	100
Marco J. Medin          "       "       "	500
M. S. Largey by E. S. Ferry and Willard Hamer, proxies	100
J. R. Walker, in person	2,110
Peter Geddes by J. R. Walker, proxy	3,100
Eugene Blum, by W. J. Barret, proxy	400
Isaac Blum               "       "	1,600
Edward Blum             "       "	1,175
Isadore Bear            "       "	200
J. S. Bear               "       "	500
Alphonso Dryfoos        "       "	600

*Anaconda Copper Mining Co. et al.* 673

Dryfoos, Blum & Co. by W. J. Barret, proxy 400

Joseph C. Stettheimer " " 1,350

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Total shares represented 310,963

It appeared that there were represented at the meeting, in person or by proper proxies, stockholders owning a total of 310,963 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than two-thirds of the entire capital stock of the Company.

The meeting was duly organized as follows:

On motion, duly made and seconded, Mr. E. S. Ferry was nominated and elected chairman of the meeting, 297,578 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. E. S. Ferry acted as chairman of the meeting.

On motion duly made and seconded, Mr. L. O. Evans, a suitable person, was unanimously elected Secretary of the meeting.

The chairman thereupon announced that proof has been made by the affidavit of Mr. J. W. Allen, the secretary of the company; also by the affidavit of Blanche H. Newcomb, the principal clerk of the Salt Lake Tribune, a daily newspaper of general circulation, published in the City of Salt Lake, County of Salt Lake, State of Utah; and by the affidavit of Mr. Joseph F. MacDonald, the principal clerk of the New York Times, a newspaper of general circulation, published in New York City, New York, that notice of the holding of said meeting of the stockholders of said com-

pany had been duly given by mailing and publication to the stockholders of the company, as required by law.

Said affidavits were exhibited to the meeting, filed with the Secretary, and are respectively in words and figures as follows, to-wit:

State of New York,

County of New York, ss.

I, the undersigned, J. W. Allen, of Elizabeth, Union County, State of New Jersey, DO HEREBY CERTIFY:

That on April 17, 1911, I caused to be mailed to all stockholders of record on that date a copy of the circular letter attached hereto, and that I also, on April 24, 1911, caused to be mailed to such additional stockholders as of record on that date, a copy of the aforesaid notice.

WITNESS my hand this 1st day of May, 1911.

(Signed) J. W. ALLEN,

Secretary, Alice Gold & Silver Mining Company.

Subscribed and sworn to before me, this 1st day of May, 1911.

(Signed) MORRIS MEYERS,

Notary Public, N. Y. Co.

NOTICE OF SPECIAL MEETING OF  
STOCKHOLDERS

of the

ALICE GOLD & SILVER MINING COMPANY.

To the Stockholders of the Alice Gold & Silver  
Mining Company:

In accordance with a resolution duly adopted  
by the Board of Directors of the Alice Gold & Sil-

ver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21st day of April, A. D. 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D. 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the Alice Gold & Silver Mining Company,

J. W. ALLEN, Secretary.

State of New York,  
County of New York, ss.

JOSEPH F. MacDONALD, being first duly sworn, says: That he is the principal clerk of the New York Times, a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said Newspaper daily, beginning on the 14th



day of April, A. D., 1911, up to and including the 5th day of May, A. D. 1911.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May first, 1911, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the fifth day of May, A. D., 1911. Said notice above referred to, is as follows:

NOTICE OF SPECIAL MEETING OF  
STOCKHOLDERS  
of the

ALICE GOLD & SILVER MINING COMPANY.

New York, N. Y., April 12th, 1911.

To the Stockholders of the Alice Gold & Silver Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D., 1911, at 10 o'clock a. m.

By order of the Board of Directors of the  
ALICE GOLD & SILVER MINING COMPANY,

J. W. ALLEN, Secretary.

(Signed) JOSEPH F. MacDONALD.

Subscribed and sworn to before me, this first day of May, A. D., 1911.

(Signed) HUGH W. PARKER,

Notary Public, for the state of New  
York, residing at Brooklyn, New York  
(SEAL) City, N. Y. My commission expires  
March 30, 1912. Notary Public, Kings  
Co. Registered in New York Co.

State of Utah,

County of Salt Lake, ss.

Blanche H. Newcomb, being first duly sworn, says: That she is the principal clerk of the Salt Lake Tribune, a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 15th day of April, A. D., 1911, up to and including the 8th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions she received the said notice, and that

the said notice has been published daily in the regular issue of said paper from the 15th day of April, A. D., 1911, to the 8th day of May, A. D., 1911, inclusive. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF  
STOCKHOLDERS**

**of**

**ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 8th, 1911.

**To the Stockholders of the ALICE GOLD & SILVER MINING COMPANY:**

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The Stock transfer books of the company will be closed on Friday, the 21st day of April, A. D., 1911, at 3 o'clock P. M., and remain closed until Tuesday, the 9 day of May, A. D., 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the  
ALICE GOLD & SILVER MINING COMPANY,

J. W. ALLEN, Secretary.

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 8th day  
of May, A. D., 1911.

(Signed) WILLARD HAMER.

Notary Public for the State of Utah,  
(SEAL) residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

Thereupon, the chairman appointed Mr. L. O. Evans and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the secretary, and the said committee, after an examination of the said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, all of which were in regular form, and correct and satisfactory, representing 308,753 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, and the proxies representing the same, are hereinbefore spread upon the minutes of this meeting.

On motion, duly made and seconded and unanimously adopted, the report of the committee was accepted.

Thereupon, the said proxies were accepted and exhibited to the meeting, and, after examination, were filed by the secretary in his office.

The chairman then stated to the meeting the

purpose for which the same had been called, to-wit, to consider the question of the speedy dissolution of said company, and to vote upon the proposition as to whether the same should be dissolved.

WHEREUPON, the following resolution was duly presented to the meeting:

WHEREAS, all claims and demands against the Alice Gold & Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and,

WHEREAS, it is deemed to the best interests of the stockholders of this corporation that the same be dissolved;

NOW, THEREFORE, be it RESOLVED that said corporation, the Alice Gold & Silver Mining Company, be dissolved and that the Board of Directors of said company make application to the District Court of the Third Judicial District of the State of Utah, in and for the County of Salt Lake, for the dissolution of this corporation, to-wit, the Alice Gold & Silver Mining Company, and take all necessary steps, and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation and to cause a proper distribution to be made to the stockholders entitled to all of the assets and property of said corporation.

Upon motion duly made by Mr. L. O. Evans, and seconded by Mr. Willard Hamer, that the said

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resolution be adopted, the following stockholders voted in favor of said resolution:

Stockholder	No. of Shares.
E. S. Ferry, in person, owning	100
F. S. Bascom, by E. S. Ferry and L. O. Evans, proxies	122
Anna Kate Adams	25
Edith Adams	25
John A. Knapp	400
Edwin G. Woolley, Jr.	200
Caroline Adler	200
C. R. Agnew	200
Joseph W. Allen	115,098
Anna B. Bach	200
Simon Bank	10
Barnes Brothers	100
Helen L. Beebe	200
E. H. Bennett (Estate)	200
Maier Berliner	300
Emily C. Berthet	1,400
Kate H. Blindauer	25
John Bogle	50
Meyer Gold	100
Corinne I. Clarke	10
Victor Day	200
Margaret C. Boyed	100
Charlotte A. Brown	75
Ernest W. Brown	3,800
Mabel Brown	20
Margaret Brown	20
Margaret C. Brown	15
William C. Brown, Jr.	20
Charles Buttrick	300

Stephen W. Carey by E. S. Ferry and L. O. Evans, proxies	100
Ephrom Catlin	200
William Chislett	250
John D. Clarke	100
Juliette F. Clarke	10
Alfred Clifford	500
W. L. Callins	42
Patrick Conlon	100
John J. Connley	25
N. M. Curtis (Estate)	500
The Daniel Inv. Co.	200
William Henry Dennis	50
John Douglas	100
Dennis Driscoll	200
Emanuel Eising	100
Rhoda Fuller	100
Harry H. Eliassop	500
Charles Gehrmann	50
Stanley Gifford	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunniss	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harris	1,000
H. J. Hayes	54
S. Heidesheimer	200
Ferdinand Hess	200
A. J. Huneke	100
H. Hobart Keeler	1,500

*Anaconda Copper Mining Co. et al.* 683

James Kirkpatrick by E. S. Ferry and L. O. Evans, proxies	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Michael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Sternbach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10
Ada Phipps	100
Clas, N. Pollak	1,500
Edward Reimel	400
F. B. F. Rhodes	300
Mabel Rhodes	7
Francis T. Robinson	1,600
Frederick A. Robinson	1,600
Maria M. Robinson	1,800
Mary E. Robinson	26
Mary Elizabeth Robinson	1,800
Nathaniel Robinson	1,300
John D. Ryan	60,656
C. T. Shearer	50
Charles D. Spencer	350
Thomas Spencer	100
Frank S. Stevens (Est.)	500
A. C. Strong	100



W. D. Thornton	by E. S. Ferry & L. O. Evans, attors.	58,161
Elizabeth Tingle	" "	200
Anna Turner	" "	300
Christopher Turner	" "	350
W. J. Valentine	" "	100
William Wagner	" "	100
Werner & Brown	" "	600
Sarah W. West	" "	163
Nathan Westheimer (est)	" "	900
Mary White	" "	20
Carl Willenberg	" "	100
Chas. A. Wimpfheimer	" "	1,000
Mattie V. Wooster	" "	100
Annie D. Young	" "	100
John List Crawford	" "	2,000
James Brennan	" "	200
Pat. Conlon	" "	100
E. I. Irvine	" "	25
Caleb Haley & Company	" "	200
J. J. Flanigan	" "	200
I. M. Rumsey	" "	100
Samuel Stein	" "	10
Mina B. Sheley	" "	200
Maurice Ober	" "	750
Henry C. Frank	" "	200
P. Kunz, Jr.	" "	200
I. W. Lukach	" "	100
William Mass	" "	2,700
Frederick Missbaum	" "	300
E. C. Westervelt	" "	1,000
O. B. Van San	" "	300
A. J. Shores	" "	300



mously adopted, the said meeting of the stockholders of said company was adjourned.

(Signed) EDW. S. FERRY.

(Signed) L. O. EVANS                      Chairman.  
Secretary.

State of Utah,

County of Salt Lake, ss.

E. S. FERRY being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D., 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) EDW. S. FERRY.

Subscribed and sworn to before me this 9th day of May, A. D., 1911.

(Signed) WILLARD HAMER,  
Notary Public for the State of Utah,  
Residing at Salt Lake City, Utah.  
My Commission Expires May 16, 1913.

State of Utah,

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me,

WILLARD HAMER, a Notary Public, in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of Special meeting of the stockholders of the Alice Gold & Silver Mining Company, as Chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

State of Utah,

County of Salt Lake, ss.

L. O. EVANS, being first duly sworn, says upon oath: That he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D., 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting. (Signed) L. O. EVANS.

Subscribed and sworn to before me, this 9th day of May, A. D., 1911.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires, May 16, 1913.

State of Utah.

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me WILLARD HAMER, a Notary Public in and for said County and State, personally appeared L. O. EVANS, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

(Signed) WILLARD HAMER,

Notary Public for the State of Utah,

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

WE, the undersigned stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the stockholders of said Company, held on the 8th day of May, A. D., 1911, hereinbefore recorded, do hereby certify that the fore-

going minutes of the said meeting are full, true and correct; and we, and each of us, did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN TESTIMONY WHEREOF, we have this..... day of May, A. D., 1911, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

(Signed) E. S. FERRY

Owning and representing 100 shares

(Signed) L. O. EVANS }

Representing 297,-

(Signed) E. S. FERRY }

478 shares by proxy

(Signed) WILLARD HAMER Representing 100 shares by proxy

WE, your committee appointed to examine and report upon the proxies submitted to the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, at its meeting on May 8, 1911, hereby report that we have examined all of such proxies, and we find that there has been filed with the secretary proxies from the stockholders of the company, representing 308,754 shares of the capital stock of the company. Said proxies so examined are herewith returned with this report.

(Signed) L. O. EVANS

(Signed) WILLARD HAMER

Committee.

[Testimony of Isaac Blum, for Complainants.]

Deposition of ISAAC BLUM, a witness called in behalf of the complainants, being by the Commis-

sioner duly sworn, testified in substance as follows:

Direct Examination:

My name is Isaac Blum. I am one of the parties to this action. Well, offhand I forget how much stock I own in the Alice. About fifteen or sixteen hundred. I don't remember just exactly. I mailed a registered letter to the Board of Directors of the Alice Company, Salt Lake City, prior to the meeting of May 27, 1910, objecting to the sale and transfer of that property to the Anaconda and asked them to read this letter and record my objection on the minutes, and to notify me that they would comply with my request.

By MR. WALSH: Please mark this letter.

(Letter referred to marked Complainants' Exhibit OO, October 9th, 1913).

Complainants' Exhibit OO is a letter I received in answer to my communication. I called on Mr. Allen when I received that letter and I told him I had some grievances, and he said, Mr. Kelley, the attorney, would be here shortly, and when he came he would notify me. He sent me a telegram. I did not expect any telegram.

MR. WALSH: Mark that, please.

(Paper referred to marked Complainants' Exhibit PP, October 9th, 1913).

Complainants' Exhibit PP is the telegram that I received. I called in accordance with the suggestion of the telegram, and I met Mr. Kelley, and had a conversation with him at that time. I asked Mr. Kelley first, I said, "Do you represent the

Alice?" He said, "No." He was the Attorney for the Anaconda. I wanted to know what interest he represented. He said the Alice had no litigation heretofore, and I am of the opinion he said he is looking after the Alice matters. I told him that I considered it a high handed piece of business for the directors when they received a communication of an objection to refuse to record it. I told him I did not send him a proxy, I sent him a letter, and that they were my trustees, as I took it, and he began to explain to me about the Apex law out there. He said it would cost millions in litigation. And I said, "Well, then, it is quite a strategical position, and it is worth a lot of money for that account." And later on he said to me the Federal Government was also opposed to holding companies, and consequently they changed it into a mine. I then insisted about an answer, whether my objection held good, and he said "I should say your objection is good."

Cross Examination:

I could tell whether I owned fifteen hundred or sixteen hundred shares if I looked it up. I cannot recollect offhand. I should say I bought my first stock about 1905 and 1906. Well, it was bought in lots, as near as I could get it. I bought some from Werner and Broun. It was bought in a firm I was in, after which we dissolved and I took my pro rata interest. I think we had at that time about fifty-three hundred shares. That was bought at different times as we could secure it. I had an interest in it. I had twenty-five per cent interest in



all that was bought. I did not have charge of buying it. My partner attended to it. I bought some, but my partner bought most of it. The name of my partner was William Maas. He is living. He lives on 85th Street. I think his number is 38 West. I knew at the time it was bought it was going to be bought for the firm. I think to the best of my recollection we paid as high as five dollars a share, and we may have paid more, but five dollars I am quite positive. I think the stock that we paid five dollars for was bought from Werner and Broun or A. Sartorius. I think the last we bought was four hundred shares at five dollars. It may have been in 1905 or 1906. I believe the last was 1906, four hundred shares at five dollars to the best of my recollection. That can be traced from records if necessary. I think that was bought either from Werner and Broun or A. Sartorius. You know that stock was rather scarce. It was not very easy to buy. As to my means of verifying whether it was bought from Werner and Broun, I believe they would very likely give me a memorandum of it. Well, we retired in 1906, and I do not think the books are in existence any more. It is over seven years. I have not seen them in three or four years. Our firm was in existence for twenty-five or thirty years and I had some of the prior books which when I moved away were destroyed, books that were fifteen and twenty years old, some of them. The last books I did not have in charge any more. My brother had the last books, nevertheless, I

wish to say the books would not show that, because we merely credited the statement of debit and credit; did not itemize the stock. If we bought one hundred shares of Alice stock the books would not show it. It would merely show the debit and credit of the total of the statement. We bought some other stocks and some securities, and we had a stock and bond account, but did not itemize it; each item that was bought; merely a debit and credit. I had a memorandum of the stock that I actually invested in as a firm. I didn't know exactly what they cost. If I was buying a thousand shares of Alice stock I knew whether it cost five dollars or four dollars a share, or a dollar and a half. My books and my balance sheets would not show it. The debit and credit of the statement would appear in the books,—the statement of Werner & Broun, or, if it were A. Sartorius it would be debit and credit; it would not say the item. As to our own firm books, they would not show every investment that the firm made. Well, I don't think they are very modern bookkeeping; it was merely a credit and debit of the total amount of stocks which we carried. We were in the manufacturing of leather goods. We had an investment account, but that investment account would not show what was in investment. We could not tell by looking at our books what our investments consisted of. We would not know, if we disposed of those shares, whether we had a gain or a loss on our account except we took the entire stock of our securities on hand. I

was not the senior member of the firm. The other members of the firm were William Maas and Edward Blum, who is older than me. We dissolved I should say in December 30, 1906 or January 1st, 1907. The division of the Alice stock was made at that time. I got some shares afterwards. There were a couple of hundred shares which a sister of mine had which I put in my name. She was influenced in buying that stock through my saying so. I guess the firm bought it and handed it over to her, but I cannot tell you the date. I think her stock cost us \$3.80 as near as I remember. I think so. Well, as it was at my influence she bought that stock, and it was my duty to protect her in this transfer if she consented, and she did. That stock was not in her name. It was in some name, not in her name at that time so instead of transferring it to her name, I transferred that stock into mine, come to think of it. I did not pay her any money at that time. I bought this stock for the firm's account. I have not bought any since the firm—I have not bought any except I got my division; that is, since the firm dissolved December 30, 1906. I could not say that it was all bought within about a year. It is just from memory that I know we paid as much as five dollars a share. We separated the stock which was on hand. There was a memorandum of what we had in a little book. The little book did not show the gross amount; it showed perhaps so many shares, bought at such and such a price for the partners. I don't know what has become of that

book for the simple reason that we had 5200 shares of Alice; the senior partner got, for example, 2600 shares and I got 1300 shares, and my brother got 1300 shares, something like that. He had fifty percent interest and the others had twenty-five percent interest. I should say in 1904 or 1905 we commenced buying the Alice stock. That was after we had heard that Mr. Ryan had taken an option on the majority of the stock. When it became known that Mr. Ryan had exercised his option acquiring the majority of the stock, it was certainly thought that the stock was a good speculation. It went up afterwards. I think as high as nine and a half a share to my knowledge. **Yes,** I did know something myself at that time about the property. I never visited it. I had information that it was a very valuable piece of property. A party by the name of Nathan Westheimer, who is deceased, told me that Adolf Lewisohn, senior member, told him it was the most valuable piece of property in Butte, and it had more copper in it than any other mine there. Nathan Westheimer died about 1905 or 6, I guess. I don't know where he lived. He was a mining man. I guess he had an office. He was the President of the Standard Consolidated Mining Company, which is at Bodie, California. My brother is in this litigation. I don't know about my partner, Mr. Maas. My brother may have those partnership books. I will ascertain where the books are and produce that little book that I referred to. I am not a party to any other stockholder suits now pending. I

objected to the Butte Coalition because I considered it wrong that the directors should go to work and exchange the assets in the treasury of Red Metal and Alice for Anaconda and then give you what they chose to the minority stockholders. In other words, I objected to the dissolution of the Butte Coalition Company, and I was about the only stockholder out of the million shares, and that is my privilege. I told Mr. Kelley if I wanted to buy Anaconda stock, it is in the market there for me to buy. He didn't need to give me what they choose to give me. At that time I had seventy-five shares of Butte Coalition stock,—Seventy-five shares out of a million. I considered my seventy-five shares for my money just as important as the man who controls it. I am perfectly satisfied to be the only man who objected to the dissolution.

#### Re-Direct Examination.

Mr. Baer here is a friend of mine only since this litigation. I did not know him prior to the time the litigation commenced. Well, in 1906, I should say I acquired some of this Alice stock. I purchased some at the sale of the assets of the Montana Zinc Company. There was an auction sale on the holdings of the Montana Zinc Company of seventy-five hundred shares, and I attended that sale. That was conducted at Adrian Mullers Auction Room here in New York City, and the market price at that time—that was in a panicky year—was \$1.80, and I bid for the stock up to \$1.80, and Mr. Dudley of the Butte Coalition Company

bought that stock and bid against me, bought it for the interest of the Butte Coalition Company, because as far as I know he is only a clerk. I bid up to \$1.80 and then I let it go. He bought it all. The sale was not confirmed. When the sale came up for confirmation it was sold to Albert Friese for \$2.26, and I got a portion of it, one thousand shares. Mr. Friese bought for himself and for me and some others. I got one thousand shares. Who the others were I don't know, and this stock was immediately taken up by Newborg & Company at \$3.00 a share. I think that was in April, 1910. One of the partners of Newborg & Company asked for an introduction, that he was anxious to meet me. He wanted to acquire my stock, and offered me five dollars a share for it. I think it was shortly prior to the time the Amalgamated sent out the circulars that they would take over the stock.

#### Re-Cross Examination.

When I was asked about my purchases, I forgot about that one thousand shares. It was a transaction over night. I paid \$2.26. I got three dollars for it right away. It is not in these shares here. I did not consider it in these holdings. You did not ask me, you know. It does not appear in these holdings. I sold that to the party who bought it, Mr. Freese. I had one thousand shares interest in it, told me that he had an offer for the entire lot at \$3.00 a share, and that they were going to sell, and he supposed I would act with the majority, and I said I would. Mr. Freese has an office, I be-

lieve at 25 Broadway. He spells his name F-r-i-e-s or F-r-e-i-s, Albert. He is now the President of the Standard Consolidated Mining Company, the Standard Consolidated, I think, they call it. The 7500 shares were sold at public auction at \$1.80 the same day that the announcement came out that the Anaconda would make the proposition to exchange the stock. I came from the auction room, and that announcement—I saw that the Anaconda had made that announcement.

(Witness Excused).

(The Exhibits referred to in the testimony of witness, Blum, are respectively, as follows:)

**Complainants' Exhibit "OO."**

**RICHARDS, RICHARDS & FERRY**

Counselors at Law

Salt Lake City, Utah.

Franklin S. Richards

Joseph T. Richards

Edward S. Ferry

May 27th, 1910.

Mr. Isaac Blum,

38 East 81st St.,

New York City, New York.

Dear Sir:—

Your favor of the 20th inst., addressed to the Board of Directors of the Alice Gold and Silver Mining Company was received by me as resident director. As you enclosed no proxy and were, therefore, not represented at the special meeting of the stockholders held this day, it was impossible to have your letter spread upon the minutes.

For the same reason, your vote was recorded neither for, nor against, the proposition of sale outlined in the notice sent to you.

Your letter has been referred to the Secretary of the Company at New York City, for submission to the Board of Directors.

Yours very truly,

(Signed) EDWARD S. FERRY.

Complainants' Exhibit "PP."

THE WESTERN UNION TELEGRAPH COMPANY.

SEND the following message subject to the terms on back hereof, which are hereby agreed to  
June 2, 1910.

#### CONFIRMATION

Isaac Blum,

Cedarhurst, Long Island.

If you will call at my office tomorrow morning at ten you can interview Mr. Kelley.

J. W. ALLEN.

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[Testimony of Thomas W. Lawson, for Complainants.]

THOMAS W. LAWSON, a witness called on behalf of the complainants, being first duly sworn, testified in substance as follows:

My name is Thomas W. Lawson and I reside at Winchester, Massachusetts. I am a farmer, an author, a banker. I was engaged in the brokerage business in the year 1899 and theretofore. In the pursuit of that business I was engaged in buying and selling mining stocks. I had some part in the original organization of the Amalgamated



Copper Company. In the work of organizing that Company, I was associated with the late Henry H. Rogers and Albert C. Burrage. The Company was organized in the month of April, 1899; I should say from memory that I had been conferring and negotiating with those gentlemen and others for three years before that time. Upon the organization of that Company, there was turned over to it, a controlling interest in a number of mining corporations; the stocks of which were acquired from the promoters of the Company. I had a part in the purchase of some of the stocks, which were thus eventually transferred to the Company on its organization. The particular companies whose stocks we were actively engaged in securing immediately prior to the organization of the Amalgamated, I should say were the Anaconda, Boston & Montana, Butte & Boston and the Parrot. Speaking generally, our plan was this: We intended to purchase the controlling interest in certain producing copper mining companies those I have particularly named and others. I distinguish between the two because we did purchase some and abandoned the purchase of others, the purchase of which was contemplated at the beginning. Our intention was to put them into a consolidation, amalgamation,—into some larger holding corporation to be organized later, for the purpose of more advantageously and profitably conducting the copper business; conducted separately at that time by the different companies we were to absorb, or hoped to absorb. Other

companies we intended to absorb were the Calumet & Hecla, and Osceola, and some properties of which I cannot recall the names, controlled or owned by Senator Clark at Butte; and some other copper companies in the Lake Region; also the Arcadia and Isle Royale. The advertisement in the Boston Herald of May 8th, 1899, over my signature contained the following statement:

"The Amalgamated Copper Company is the company into which is to be merged all sound producing copper companies that are now paying and after close investigation prove good and will pay in the future over 8 per cent. on the par value of the stock which the Amalgamated Company issues."

It accurately states the purpose as it was developed in the course of my negotiations with my associates. I do not believe we intended at that time to purchase the United Verde if we could have purchased, we would have been very glad to get it, but we feared at that time we would not be able to purchase the property from Senator Clark. Generally speaking the plan contemplated the acquisition of all producing copper mines in this country, which we might be able to purchase upon any reasonable terms. We intended to purchase all of the stock of each company, in which we could purchase a controlling interest, if it were possible and feasible. I think we also talked of acquiring the Rio Tinto. In the article which appeared in "Everybody's" for the month of October, 1914,

written by me, there appears the following statement:

"In 1896 I formulated and perfected the plans for 'Coppers,' a broad and comprehensive project having for its basis the buying and consolidating of all the best producing copper properties in Europe and America, and educating the world to their great merits as safe and profitable investments;" which states succinctly the plan which I had in mind. A fair statement of our purpose appears in the New York "Sun" of April 28, 1899, in the article headed "Here's the Copper Pool," as follows:

"The copper combination materialized yesterday. The new company will combine nine copper mining companies. Its purpose will be so far as possible to give stability to the copper market. It is not proposed to advance prices but rather to prevent an undue advance as by keeping the prices upon a fair basis it is believed that the demand for the metal will be fostered and the profits of the company be all the greater. Economies in the business will be instituted."

I know about the United Metals Selling Company. It was organized about the same time or shortly after. The principal business was the old copper selling agency business of the Lewisohns. Their business was taken over I think as a whole and it was made the basis of the new selling agency. This company had contracts with a number of the larger producing copper mining companies, contracts to sell their metal for them

—finance them during the selling of it, give them credits, and in a general way what is known as the copper selling agents business, charging a commission for the work done. I think the Amalgamated Copper Company became the owner of some stock—the controlling interest—in the United Metals Selling Company. Subsequently I think it acquired all of it. The organization of the United Metals Selling Company was in contemplation at the time the organization of the Amalgamated Copper Company, as a part of a general scheme to market the copper to a finality. My article in “Everybody’s” heretofore referred to, states the case, the conditions, about as they were as follows:

“On the board of directors, too, was Governor Flower of the financial and brokerage house of Flower & Company, who had acted as fiscal agents for the corporation at its formation, nor must I forget the Lewisohn Brothers who had been induced to turn in all their copper business at actual cost to be incorporated in the United Metals Selling Company, a part of the Amalgamated scheme but not included in the corporation, and every one of these had elaborate assurances that he was in on the cellar floor.”

As regards the reason for acquiring the selling agency, I will say that in the carrying out of our general scheme, the general scheme which was contemplated all the way through, it would have been very essential to have the marketing of the whole product of the different mines controlled

or owned by the consolidated company, as the very foundation idea of the whole scheme was the control of the price of the metal, control to an extent that we could keep the price from the wild fluctuations that had been the history of copper metals from the beginning. In other words, a control that would have enabled us to establish a fair price and to hold that fair price through the ups and downs of general business, through the periods when the metal would be in strong demand, when the demand would let up, and there would be accumulation or overproduction, a temporary over production, and the very essential of that would be a control in the sense which I stated, of the selling, of the getting the metal to the consumer. The original acquisition of its assets by the Amalgamated did not include any of the stock of the Butte and Boston or the Boston-Montana, but we had, prior to its organization, secured a considerable amount of the stocks of these companies for the people who were organizing the Amalgamated. At that time in Montana, the management of the Butte and Boston and Boston-Montana was harmonious with the management of the Amalgamated. The reason that the Amalgamated did not acquire immediately upon its organization the stocks of these two companies was that in the beginning and up to within a comparatively short time of the organization of the Amalgamated company, we had intended to have the Boston and Montana, and Butte and Boston stocks the first stocks to be absorbed, but in the mean

time Mr. Rogers had been able to acquire from Mr. Marcus Daly the control of the Anaconda property, which had not been originally contemplated, or the control of which had not been originally contemplated, until after the Boston-Montana and Butte and Boston had been arranged for; and that would necessitate a larger amount of capital at the start, than Mr. Rogers and Mr. Rockefeller and some of our associates thought was advisable, so in a general way it was decided to bring the contemplated amalgamated property to the public in sections, and what was to have been the first section was shifted to the second, so that in the first section could be included this large amount of Anaconda. They had secured a control of the Butte property. They had not purchased the control of the Boston-Montana, but could speak for the control of it—options in some cases, and friendly relations with the larger holders in others. In 1899 there were being operated in the Butte camp what were known as the Heinze properties. Mr. Heinze's litigation was with the Boston and Montana people originally, that is in the formation of our plans we intended to take over the mines controlled by what is known as the Bigelow people, and we looked upon their property as the Boston-Montana, and Butte and Boston, and some others and were not familiar at that time with what afterwards became the extensive ramifications of Heinze's claims on certain of those properties; so that it lay with us that if we could get the Bigelow properties and Boston-Montana

and Butte and Boston, it would be as far as we could go; but it developed that Heinze's claims ran into the very stomach of the Boston-Montana and Butte and Boston. That time we did not attach very much importance to the Heinze interests. I remember the advertisement which you call to my attention, appearing on page 5 of the Boston "Herald," under date of Saturday, April 29, 1899, headed "Amalgamated Copper Company" and concluding "National City Bank of New York, James Stillman, President, 52 Wall Street, New York." I wrote and inserted the advertisement in the "Herald." That advertisement likewise appeared in the New York "Sun," under the same date, April 29, 1899. I think I wrote that advertisement myself. I think it was the suggestion of Mr. Rogers, Mr. Rockefeller and Mr. Burrage. The leading spirit or master-mind in the effecting of the consolidation of which we are speaking was Mr. Henry H. Rogers. He became interested upon my suggestion. I had talked with him about the matter for several years.

MR. WALSH: We offer this in evidence, and will call it "Plaintiffs' Exhibit 1," for convenience of reference.

(The exhibit referred to is in words and figures, as follows:)

Which said offer, and the receipt of the same in evidence, was objected to by the defendants, upon the ground that there was no evidence that James Stillman had any authority to insert said advertisement; said objection was overruled by

the court, to which ruling the defendants excepted.

**Exhibit 1.**

(From the Boston Herald, Saturday, April 29, 1899, page 5.)

**"AMALGAMATED COPPER CO.**

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Capital.....\$75,000,000.

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This Company is organized under the laws of the State of New Jersey for the purpose of purchasing and operating copper-producing properties. Its capital is \$75,000,000, divided into 750,000 shares of common stock, of the par value of \$100 each. It has no bonds or mortgage debt.

This Company has already purchased large interests in Anaconda Copper Company, Parrot Silver & Copper Company, Washoe Copper Company, Colorado Smelting & Mining Company, and other companies and properties.

MARCUS DALY, Pres.,

H. H. ROGERS, Vice-Pres.,

WM. G. ROCKEFELLER, Sec'y & Treas.

New York, April 28, 1899.

**OFFER FOR PUBLIC SUBSCRIPTIONS.**

Referring to the foregoing statement of the Amalgamated Copper Company of New Jersey, notice is hereby given that offers for subscription to 750,000 shares of the par value of \$100 each of the stock of the said copper company will be received at the National City Bank of New York, un-



til twelve o'clock noon, Thursday, May 4, 1899, at the rate of \$100 per share.

Subscriptions must be addressed to the said bank and accompanied by a certified check to its order for 5 per cent of the amount of such subscription, the balance to be payable within 10 days after date of notice of allotment.

Temporary negotiable receipts on payment of sums due on allotment will be issued, exchangeable for certificates of stock, as soon as same can be engraved.

In case of over-subscription, allotment will be made pro rata. The right is reserved, however, to reject any subscription.

New York, April 28, 1899.

National City Bank of New York,

James Stillman, President.

52 Wall Street, New York."

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The same advertisement appears in the Boston "Herald" of date May 1, 1899; likewise in the issue of May 2, 1899; and in the next column immediately adjacent thereto appears an advertisement over my own signature.

MR. WALSH: We offer in evidence now a Law-son advertisement appearing in Column 2, on page 4 of the "Herald" for Tuesday, May 2, 1899, which we will refer to as "Exhibit 2."

Which said offer, and the receipt of the same in evidence, was objected to by the defendants, upon the ground that the same was incompetent, irrelevant and immaterial; that the same was hearsay,

and that the same did not appear to have been inserted in any paper upon any authorization from the Amalgamated Copper Company, which said objection was overruled by the court, to which ruling of the court the defendants then and there excepted.

(Said Exhibit 2 was in words and figures following:)

**Exhibit 2.**

(The Boston Herald, Tuesday, May 2, 1899,  
Page 4.)

**"COPPERS.**

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**AMALGAMATED SUBSCRIPTION.**

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Owing to the very large number of inquiries (over 3,000 the first day) received and anticipated, as to the best means of securing an allotment of the first issue of the consolidated stock, it is necessary to reply collectively by this advertisement. I advise the purchase of Amalgamated by subscription, because it is, in my opinion, the best opportunity ever offered the public for safe and profitable investment. It is probably the first time in the history of public subscriptions that a stock is worth and can be sold for 50 to 75 per cent. more than the subscription price, and yet will be allotted to each and every subscriber in proportion to his application. This means that everyone who makes a bona fide subscription, large or small, will receive shares at \$100 each that can be sold at once at a large profit.

In my opinion the entire \$75,000,000 is worth and can be sold today for from 30 to 60 per cent. more than the subscription price.

First—Because the assets now owned by the Amalgamated Company are worth from \$100,000,000 to \$125,000,000.

Second—Because the Amalgamated Company is now earning at the rate of 12 to 16 per cent. per annum.

Third—Because it will, from the start, and always after, pay 8 per cent. dividends annually.

Fourth—Because the interests actively engaged in its management will make and keep it one of the most conservative and sought-for investments.

Fifth—Because there will be rights attaching to it almost at its beginning that will give to it large profits independent of those accruing from its dividends.

The fact that the above values are now known to some, and will be in the next few days recognized by all, will cause the stock to be largely oversubscribed, but this should deter no one from subscribing, for the reason that, notwithstanding this certainty, those who are engaged in perfecting this great enterprise have decided that, instead of a favored few being allotted the entire amount, all shall be treated alike. Captious critics of "Coppers" will probably again cry their sarcastic "philanthropy," but to the legion of broad-minded investors who have followed and profited by this great industrial revolution the policy of this liberal treatment will be obvious—the Consolidated Com-

pany is to be many times larger than its present capital indicates; it, in my opinion, will from time to time offer to the investing public large amounts of increased stock for the purpose of obtaining hundreds of millions of cash with which to pay for all the producing copper mines, as it is now obvious to students of affairs financial that this company must in time become the owner of all good mines, because all such mines can be run to better advantage to the consumer of copper, the investor in copper stocks and the present owners, by the Amalgamated Company than by others. This being so it requires no supernaturally bright mind to see the wisdom of a policy that insures a constantly increasing premium for every new issue of stock.

I advise all intending subscribers to send their subscriptions personally, or through their banking or brokerage house, direct to the National City Bank of New York. While my firm will, for the convenience of its clients, forward subscriptions, I would have it understood that such subscribers will receive the same treatment if they send their applications direct.

My firm will also furnish subscription blanks to those who, through lack of time or otherwise, cannot secure them elsewhere.

All subscribers should bear in mind, if on receiving their allotment they are disappointed with the amount, that their subscription is only reduced in the same ratio as all others, and that they have the

pledge from a board of directors whose personnel means good faith.

In advising the purchase of "Amalgamated" I call attention to the names of the men who are to conduct it to a future, and to the fact that from its inception it will surely give a return of over 8 per cent. per annum on its par.

THOMAS W. LAWSON.

May 1st, 1899.

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#### NOTICE.

Since contracting for the publication of the above, I find, owing to the overwhelming number of subscriptions with accompanying checks to my order or that of my firm and the unlooked for amounts of same, I am compelled to give notice to all who are desirous of subscribing through us that we will not, after today, accept their subscription, and advise that they make same direct to the National City Bank of New York.

I regret being compelled to refuse, particularly our own clients, our aid in securing allotments, but feel sure they will understand my position.

I again repeat, every subscriber will receive the same treatment by applying direct to the National City Bank of New York, as he will through anyone connected with the enterprise. We will furnish subscription blanks on application.

THOMAS W. LAWSON.

May 2, 1899.

LAWSON, WEIDENFELD & CO.

Bankers and Brokers.

New York.

Boston.

Members New York Stock Exchange."

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The same advertisement by the National City Bank and myself appear in the issue of May 3, 1899, being a duplicate of the day before. I tried to keep myself well informed concerning the production of the principal producing copper mines of this country, and particularly those at Butte. The statement appearing in the New York "Times" under date of April 27, 1899, that "The Butte camp produces 36 per cent. of the world's copper, or about 220,000,000 pounds" conforms fairly well to my recollection of what the production of the Butte camp was. That statement continues "The production of the Butte camp is now approximately as follows: Anaconda, 120,000,000; Boston-Montana, 63,000,000; Butte and Boston, 12,000,000; Colorado Smelter, 10,000,000; Parrot, 15,000,000; total, 220,000,000." That conforms to my recollection of what was the production of the Butte camp. The article continues "Besides the above property, which will probably go into the copper combination capitalized at over 200,000,000, there is the M. O. P. and the Clark Smelter, but the production of the entire mountain is under 250,000,000 pounds per annum." In a general way that statement accurately represents the facts as I now recall them. In a general way I am familiar with a work called

"The Truth About Trusts," by Moody. Under the head of "Analysis," speaking of the Amalgamated Copper Company, it states:

"While the result turned out far otherwise, in the original plan both judgment and sanity prevailed, for it was purposed not merely to form a combination of a few of the larger producers embracing a copper production of only about 150,000,000 pounds per annum out of a total of about 1,200,000,000 pounds as the world's production, but to logically proceed from this nucleus to a much larger trust which would first perhaps take in the United Verde, Calumet & Hecla, and every large copper mining interest in this continent and extend ultimately to other continents, embracing the Rio Tinto properties of the Rothchilds as well as all other important producers. In the carrying out of these plans it was estimated that to acquire approximate control of the entire copper production of the world, about 1,200,000,000 pounds per annum, would involve the issuance of an approximate share capital of \$1,200,000,000, thus capitalizing copper production at the rate of one dollar for each pound of copper produced. The original formation of the trust was, therefore, based on a sound proposition from the standpoint of its promoters and on the only broad rational basis, that any trust that contemplates the issuing of watered capitalization in large amounts can be based on, and be successful. It aimed at and saw the necessity for acquiring a monopoly of the copper production of the world, the purpose being to restrict

the production to what might be the legitimate at about twenty-two cents per pound."

That is a fair statement of facts, with quite a decided stretching, perhaps, of conclusions. I do not agree with the trust,—where they bear down on the trust end and the restrictions, etc., as I think they are wrong there. We did intend to capitalize the copper of the world on about a dollar a pound basis, which we believed to be a fair one, and I believe so yet. Capitalization on that basis could scarcely be stigmatized as water capitalization, but just the opposite. That is where I disagree with them. I don't think there would be, fairly speaking, any water in it. If I may express an opinion along those lines, when I took the project to Mr. Rogers and Mr. Rockefeller at the beginning and stated to them in a broad way what my ideas were, and how I had worked it out in a lifetime's association with copper mining production, selling and consumption, I stated to them briefly this: There is so much copper, one of the foundation necessities of civilization, in the ground. It cannot be added to. It is a reserve storehouse for the future, and it has from the beginning,—as the business has been conducted from the beginning,—we have well authenticated reports going back three thousand years, to this Rio Tinto, one of the greatest copper enterprises in the world that has been going continuously for three thousand years, so that we have probably the best, the most reliable and authentic history of any industry in the world. And I stated to them that from the begin-



ning the business has been conducted in a haphazard sort of way. When the world's demands were in excess of the production, copper would go to fairly high prices. When the world's demands slackened, it would go to disastrously low prices. Now, I said, if we can form a fair combination, a combination that will be fair from the legal and moral standpoint, that will contemplate the taking care of the consumer as well as the producer and by acquiring all the copper that is now in these natural storehouses, and then find out what the fair price of producing it is, how much we are eating into our capital, looking to the ultimate exhaustion of the storehouses, and that price will give us—will give the purchasers at today's selling price of these properties a fair return and from two hundred to four hundred per cent. inflation, if "inflation" is a fair word. That is, the investment of \$300,000,000 will give us from eight to twelve hundred million of good sound value. In other words, I mean to convey the idea that if we were thus able to consolidate the properties, they would immediately have a value far in excess of what they had, severed as they were. That is it exactly and from 200 to 400 per cent. of our investments so soon as we had informed the world of the actual conditions, so that in the sense of the ordinary trust, we were working upon a directly opposite method of procedure. We were contemplating showing our hand to the maximum for the profits, where the ordinary trust depends upon the concealment of facts. There was no benevo-

lence to it, it just happened that this peculiar industry, which stands alone in all the industries of the world,—there is nothing like it,—the more you go into it the more sure you are that copper stands out alone. We have raked and scraped the earth's surface and we know what we have to deal with; and here was a peculiar condition of affairs. Those people in the copper business did not understand their business. Those who were selling copper from the good profitable mines, the good producers, thought that they were getting good profits while, at the same time, there was \$2 being lost from the unprofitable mines. Now, taking it as an industry, as a whole, copper for the past forty years has not returned a new dollar for an old dollar spent. That is the history of copper right up to today. They have not got a new dollar back for an old one. They have been giving their principal to their stockholders in the form of dividends, a small fraction above those returned by the transportation lines or any manufacturing or any of the perpetual investments that do not eat into their principal, and it was after calling Mr. Rogers' and Mr. Rockefeller's attention to that big broad principle that this industry was in a class by itself, that I asked them to put their capital in without any stock jobbing or trickery or trust monopoly at all. Simply buy the properties, show them to the world, how good an investment they were, and that we intended to keep the price year in and year out, which would be better for the consumer because our copper

would be sold at a price which would enable us to give steady wages to those employed in copper mining and give us a fair going rate of interest on the actual money invested in the copper industry, in our section of it, because we were only taking the profitable ones, and all the capital which had been sunk in the losing mines was outside of ours. We did not have to average that, so that it would fairly give a return of two hundred to four hundred per cent. and it holds good today, in my opinion. So that I agree with his facts, but his conclusions I think are erroneous, from not having gone deep enough into the subject. Prior to the time I interested Mr. Rogers in this project I had dealt in copper stocks from 1870 to 1896, say twenty-five years, buying and selling them, first for the house that I was brought up with, a Boston Banking & Brokerage House, that dealt in coppers and financed the different mines, and then on my own account. The articles of incorporation of the Amalgamated are very comprehensive in their character and contemplate the owning and operation of mining properties as well as the acquisition and holding of stocks. We had no purpose in acquiring simply the stocks originally, instead of the properties themselves, other than it would be necessary to first acquire the stocks, but I think eventually we contemplated putting all the properties into one corporation. The idea that I have told you about is correctly expressed in the deposition taken in what is known as the Parrot case in which I said: "We intended in a general way

to control the different corporations of which we had purchased the stock, and eventually to merge them into the new corporation, sell their properties and liquidate the corporations and disband them."

(Witness excused).

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[Testimony of **Arthur V. Corry**, for Complainants.]

**ARTHUR V. CORRY**, a witness called on behalf of the complainants, testified in substance as follows:

#### DIRECT EXAMINATION.

My name is **ARTHUR V. CORRY**, and I live in Butte, Montana. My business is that of a mining engineer. I am a member of the firm of Harper, Macdonald & Company, Mining Engineers and Surveyors, Butte, Montana. I have lived in Butte since 1881, and have been practicing my profession since 1898, at which time I received the degree of mining engineer from the Colorado State School of Mines, upon the completion of a four years' course at that institution. I have been associated with Harper & Macdonald since April, 1912. Prior to that time for a period of five or six years, I maintained a general office in Butte, during the course of which time I made numerous examinations of mining properties in different parts of the State. I was individually engaged in developing properties of my own, and also engaged in developing properties under lease from others. I have noticed particularly the course and progress of the mining development in Butte

camps since about 1902 or 3. I have continuously kept in touch with conditions as best I could when in Butte. In a general way I am familiar with the mining development of the camp and the mining claims in it. I have bought and sold several claims on my own behalf and have, during these years, made numerous examinations for different clients with the idea of arriving at or appraising the value of the property for purchase or for sale, and have, during these years, obtained bonds upon mining property for clients whom I had interested or whom I sought to interest in various properties.

I know the properties of the Alice Gold Mining Company, or those that formerly belonged to it in Butte. I have had occasion to investigate the mining properties in that neighborhood with a view to their acquisition. In that neighborhood I have examined several claims somewhat removed from the Rainbow ledge, in which it was a factor as to whether or not they were in close proximity to the Rainbow ledge or possibly upon the Rainbow ledge beginning in March, 1906, down to February, 1912. I have here a map, which I will refer to, it being marked "Plaintiffs' Exhibit 1, Corry." I have often seen a copy of this map marked "Plaintiffs' Exhibit 1," and heretofore introduced in evidence, and the two maps are practically substantially the same. Complainants' Exhibit 1 is a reproduction of map made by Harper, Macdonald & Company and which map was made from the same original detailed sheets, that the exhibit

marked "Plaintiffs' Exhibit 1, Corry" is made, from the same original, the difference being possibly some greater detail, one being to a larger scale than the other. "Plaintiffs' Exhibit 1, Corry" is on the scale 400 feet to one inch. Upon it are shown several claims known as the Alice Group and colored an orange color. The area of these claims so shown and colored there is 149 acres plus; that is, it is between 149 and 150 acres. The data justifying this coloring was obtained from the Assessor's office in Silver Bow County, and was given there as the property taxed to the Alice Gold & Silver Mining Company. There is embraced in the area the Saukie East and Saukie West.

I have likewise a second map here—Plaintiffs' Exhibit 2, Corry—which is a geological and vein map of the Butte-Montana district taken from the professional papers, No. 74. It is published by the United States Geological Survey, under date of 1912, and it shows this is one of the series of several sheets appearing in that professional paper, and it shows in a general way the vein system in the entire Butte camp. Now upon this exhibit I have placed to the true scale in black lines, outlined in red, the group of claims shown on plaintiffs' exhibit 1, known as the Alice Group. These are placed upon plaintiffs' exhibit 2, Corry, in their true position. I desire to state that in addition to the Alice claims, I have shown the Poser Claim, and likewise the Elm Orlu. Upon plaintiffs' exhibit 2, the veins are shown according to

the legend on the right hand side of said map. The outcrops of the numerous veins are shown, silver veins being shown in blue, the copper veins in red, where known, and where either one or the other is not wholly developed they are shown in their respective colors as being broken dotted lines. I have surrounded the Alice group with a red border of Crayon, and have followed down the line of the blue colored vein known as the Jessie likewise; the Edith May with light crayon color—red. Within the interior of the space which marks the Alice Group, I have outlined in their respective colors, the veins shown thereon, in blue crayon; that is, I have brought out more prominently than they were upon the map the veins within the Alice group. I have been on the Alice property, but I have never been under ground. The Alice group occupies practically one mile of the outcrop of the Rainbow Ledge. Upon this group the Rainbow ledge is most strongly developed in its outcrop than anywhere else observable along its strike. Beginning upon the western limitation of it upon the Rising Star, this vein appears, or the Rainbow rather, appears as a series of two or three very wide veins with a strong outcrop and with generous mineralization. Proceeding easterly to the west edge of the Alice lode, we have three veins of the Alice lode. These likewise are very strongly mineralized in their outcrop. They vary in width from ten to thirty feet and as they proceed easterly approximately close to the center of the claim they seem to join or coalesce; pro-



ceeding easterly therefrom they appear for a short distance as a single individual vein of about 70 feet in width. In addition to this I may say this, that it is very likely that there are some parallel veins following this very wide vein, but their outcrop are approximately in this portion of the Alice on account of the great amount of dump, debris, covering it; I have every reason to believe that such is the case from the fact that there is a strong vein in the Saukie West, which, if changed in its western course, would traverse the northern portion of the Fraction lode, and into either the Alice or the Rooney. Continuing easterly we have upon the Magna Charta an extraordinary development of the vein outcrops, consisting of a series of three easily observable veins varying in width from—I wish to correct that, four veins, varying in width from 20 to 40 or 50 feet; these have a general northeasterly strike; immediately south of the Magna Charta and in the Magnolia ground, there is a strong well developed vein belonging to the Rainbow series, having a general east and west strike of 10 to 12 feet in width, at least; continuing easterly—then referring immediately to the Saukie West upon the north and the Saukie East, there is shown thereon a vein having a general northeast strike of 15 to 20 feet in width; this vein can be traced easterly through the Saukie East to the point approximately corresponding to the east end line of the Saukie East, where apparently it is broken up into two or more diverging veins which proceed through the Boston lode.



Coming now to the Valdemere lode, immediately east of the Magna Charta, this same Rainbow lode is very strongly developed therein, and there is a series of open stopes of varying widths upon the three of the four veins constituting the Alice Lode at this point, and beyond this the vein continues into the Poser ground, and in a general easterly direction, easterly through the Elm Orlu into the Black Rock. I may say that upon the Reef Fraction there is a very strong east and west manganese, quartz manganese vein, lode, of a width of three to five feet, as shown in a small open shaft there, this very likely being one of the minor parallel veins to the Magna Charta Rainbow ledge. Now, I have described in a general way the Rainbow ledge itself; there is a system, or there are a series at very frequent intervals of veins of a diverging strike coming into the Rainbow ledge. I refer particularly to veins with a northwesterly strike, southeasterly strike, and that is very noticeable. The Rainbow lode, as exhibited by actual workings, is traceable for at least two miles and a half beyond the limitations shown upon this map. Beginning at a point a little east, at a point about where the word "Black Rock" appears, and extending generally westerly in the shape of an arc or rainbow, a distance of about two miles and a half. At frequent intervals along its strike there are numerous old shafts; also its outcrop may be observable at frequent intervals by the fact that it frequently projects above the surface of the ground, or that it throws a very strong out-

crop material,—float material—broken down from the original outcrop. As to its relative importance on the veins of the Butte camp, at least as indicated by its size, it is the most pronounced feature in the entire Butte district, even exceeding the ancient outcrop in the southern part of the City. It is by far the largest and most continuous outcrop, I believe, in the entire district. As to actual operations carried on at any place along the lode—well, upon the Poser and upon the Elm Orlu and the Black Rock, actual mining operations of considerable magnitude are being carried on upon this Rainbow lode, the work upon the Poser and Elm Orlu being done by the Clark interests and upon the Black Rock and Four Johns by the Butte and Superior Copper Company. From the Black Rock and Elm Orlu they are taking zinc ore, and possibly some from the Poser underground; from both the Elm Orlu and Poser they have in times past shipped and extracted some considerable copper ore. I cannot give the amount except by reference to their reports. It was a very large tonnage; an extraordinary large production of zinc. Throughout the whole extent of the Alice property, and more especially upon the Rainbow ledge itself, there has been a great amount of development. Upon the Valdemere claim there is a shaft that has from its dump there, evidence of being about 400 feet deep, and upon the Magna Charta, to the best of my inquiry and from the general appearance there, there is likewise a deep shaft, presumably 700 feet deep.

Upon the Clark's Fraction there is now being operated a shaft of some considerable depth through lessors; that likewise is upon this Rainbow ledge, but as to what particular individual vein of the Rainbow ledge, I cannot say; and upon the Alice there are a great many surface workings and shafts of varying depths, in addition to which there is a large shaft, or a deep shaft with very large dumps; presumably the shaft is, to the best of my inquiry, 1500 feet deep. Upon the Moulten there is being operated now through lessors,—the Moulten itself being upon the Rainbow ledge, and lying between two portions of the Alice,—the Rising Star and the Alice claims; a deep shaft there is being operated, and to the west of that there appears upon the Rising Star a shaft presumably four or five hundred feet deep; in addition to this there are numerous shafts of varying depths upon some of the claims lying south of the Alice lode, and not distinctly upon the Rainbow lode itself. In the Curry, in the Midnight and the Blue Wing and within the Paymaster and Neptune there are shafts that are open,—in some instances the parallel vein and in other instances a northwest vein; upon the Magnolia claim there is a series of open cuts and the remains of a shaft which was evidently of some considerable depth; immediately south of the Magnolia the Belle of Butte claim is, or has until lately, been operated by lessees, or operated by some miners through a shaft near the western end thereof. That is on a ledge coming into the Rainbow ledge. Speaking

from my own knowledge that is available to everybody these old claims were worked for their silver contents by the former operators, the Alice Company, and by lessees subsequent to that time. In other words, the activity upon the Alice lode has been wholly confined to the mining of silver ores. They may carry a greater or less extent of gold—primarily for the silver contents. As regards the northwest-southeast veins entering this ground, there is shown upon this map on the Moose lode, the Moose shaft, that is approximate, and is not intended to be within 25 or 30 feet of its exact position, said position being taken with a compass, it being difficult of measurement at that point. There is likewise shown on the Badger State claim the Badger State shaft and the Badger State discovery shaft; these are within five or ten feet of their true position. The Badger State shaft is southeasterly from the Moose shaft a distance of approximately 1250 feet; the Badger discovery shaft is easterly from the Badger State shaft a distance of approximately 500 feet. The Badger State shaft and the Moose shaft are both deep shafts, and through these considerable mining activity, mining operations are being conducted; it is perfectly feasible to connect the Moose shaft by underground workings with the Badger State shaft; that is, they are not at such a great distance that that would not be done in that course of mining operations. Beginning near the center of the Valdemere claim and the underground—beginning at the center of the south side line of the

Valdemere claim, there is a strong vein, northwest vein, which proceeds southeasterly to a point just below the claim known as Survey 7741; continuing generally southeasterly, this claim 7741,—a better definition would be in close proximity to the southwest corner of the Mill View,—continuing in a southeasterly direction to about the center of the Badger State claim and the west side line,—very close to this point it forms a juncture with a vein which has a more northwesterly course, proceeding generally northwesterly presumably through the Moose shaft; from this point, from the center of the west side line of the Badger State, proceeding in a generally southeasterly direction through the Badger State shaft itself, and apparently continuing in its general southeasterly direction; immediately north of this vein, a distance of about 125 feet south of the north side line of the Badger State, there is a vein of considerable width having a general strike of north 85 west; this may be possibly a faulted section of a vein on the northerly side line of the Badger State, and I cannot designate it by any specific name; it is, however, a very strong ledge. In a general way there occur in this vicinity two veins at least—two northwest fractured veins, fault veins, which have proven productive. These are known as the Jesse and the Edith May, the latter being approximately parallel to the former, and a distance varying from six to seven hundred feet south thereof. The vein colored red is the Jesse vein, the second one is marked Edith May.

Both veins are colored red and I have written the respective names of each alongside the line. There has been a very considerable production from the Jesse vein through workings in the Tuolumne and the North Butte. The famous mines along that vein are the North Butte, the Butte and Ballaklava upon the eastern extremity. The most noted individual claim is along there, being the Mountain Chief and the Right Bower, the Tuolumne, and the Jesse and the Badger State, the Mill View,—along the Jesse; along the Edith May the properties of the North Butte Company, that is, the Jesse, the Edith May and the Miners Union, and the Aurora. They are producers of very considerable tonnage of very high grade ore. These two veins are worked for the copper ores within them; the physical appearance of the ore,—it occurs in very large shoots of high grade ore, and these shoots are of considerable magnitude and form a very easily developed ore body, and are no doubt highly profitable. Operations are carried on on the Jesse vein along its strike over at least 3000 feet. The furthest development upon the Jesse to the west are the workings possibly in the Granite Mountain. I pass this vein through the Badger State vein for the reason that there appears a series of very strong northwest outcrops which would co-ordinate with the Jesse vein outcrop to the southeast and having the same general surface appearance. It is either the Jesse or a parallel vein that passes as indicated. The shaft on the Badger State is so placed as to lead to the conclusion that

they are working the Jesse vein. The vein worked through the new shaft upon the Moose, I believe, would be a very strong northwest vein coming through the Badger State, and very likely being a faulted segment of the Edith May. The most westerly outcrop that I find in either of those two veins is at a point about 200 feet easterly from the Moose shaft. As a mining engineer, I would say as to these veins continuing until the encountering of the Rainbow lode itself, that between this point last referred to and the southern limits of the Alice property, there are a series of holes which bring this line of outcrop to within possibly 100 feet of the southern boundaries of the Alice group, and I would say that they would at least continue to the intersection with the Alice lode, and if possible would continue a distance into the Rainbow lode. Usually in both of these properties any large commercial ore bodies of any great consequences are found below the 1000 foot levels. There are some instances of small ore shoots, or lenses, appearing a couple of hundred feet higher up toward the surface than that, but the large well determined ore bodies do not occur above the 1000 foot level. To reasonable depths you find very fair continuity along the strike and along the dip of these individual ore bodies within the vein itself with some few exceptions, the mineralization is quite uniform within the body itself. It is my opinion that those two veins eventually unite or intersect with the Rainbow lode. The general expectancy, where two great veins thus

unite or coalesce, is that at that point of juncture, or in very close proximity thereto, that you will encounter large ore shoots and larger ore bodies than elsewhere along either one of the two veins taking part in this juncture or intersection. The basis of that expectation is the physical fact of the disturbance of one or the other—the breaking up of one vein by the second vein, penetrating it, affording an open space through which mineralizing solutions can more freely circulate and within these spaces the opportunity is afforded of depositing the mineral bearing contents that up to that time were in solution, traversing this particular vein, or that particular area. From what I know of the conditions in the intersecting or coalescing of the copper bearing veins, I would say with reference to the likelihood of copper being found in the exploration of the Alice properties, that I believe that at those favorable points copper bodies would be found. In addition to these two particular northwest veins there are numerous others that were observable especially from the southwest portion of the ground, but I was not afforded the opportunity of studying those in great detail, but over this entire portion of the Alice group it is a very frequent occurrence, the observance of the northwest veins coming into the main Alice, and immediately north of the Alice, of seeing some veins more easterly or westerly, however, that likewise will come into the Rainbow ledge. As to how extensively the Butte camp was prospected and worked for silver,—it



was prospected over a greater portion of the entire district and for several miles around, for silver, but the actual silver production,—producing properties, were confined more to this northern portion of the camp, and especially to the Alice on the Rainbow ledge, and in that vicinity and to the westerly of the ground shown upon this exhibit,—plaintiffs' exhibit 1, Corry. There is history of change in some of the mines in Butte from silver to copper; that is the ordinary experience, that is, to a greater or less depth the majority of the veins are more valuable for their silver contents. They show more silver values than they do copper, or even gold, and with depth some of these individual properties have developed into distinctly and wholly copper producers. There has been an extension of the copper producing area of Butte. The entire history of mining operations in Butte has been an extension of the boundaries of the producing mines of any one period. The tendency has constantly been to enlarge the boundaries beyond which it was supposed there was no property capable of producing and that development in the last few years has taken a pronounced trend towards the northern portion of the camp, in particular to the region in the vicinity of the Alice group. These two copper veins that I have mentioned, the Jesse and the Edith May, as far as production is concerned are relatively a result of the late period of development. I believe the North Butte Company was the first to produce continuously a large amount of ore

from either of these veins. and I think that was within the last five or six years. Other mines now producing largely still further to the north and west of the North Butte properties are the Berlin, as nearly as I can inform myself, the Croesus and the Snow Ball; immediately north of the Badger State, the Emily has been operating along the Badger State, and north of the Emily and adjoining that the Pilot has been mining. There is litigation between the Pilot and the Anaconda Copper Mining Company about certain apex rights upon the Emily ledge. The Pilot Butte is operating underneath the Emily from its shaft on the Pilot Butte. I was familiar with all of these conditions in the early part of 1910. One thing existing at that time which caused attention to be directed to that portion of the camp was the general expansion of the mining activities; another was the expectancy of being able within a very short interval to treat ores which up to that time were not supposed could be treated or had not been treated economically, and during that time there was considerable general development over the entire district, especially the northwestern part. Several properties were operating successfully in the vicinity of this property along about that time. The operations of the Butte and Superior on the Black Rock at that time had reached a stage where there was no question as to ultimately achieving a financial success; in other words, their metallurgical difficulties had practically been overcome as they were in such shape that they could

reasonably look forward to an uninterrupted successful treatment of the particular class of ore mined and discovered and outlined in the Black Rock claim. They commenced to produce profitably, I believe, in 1910. As to the exact date of the profit of the Butte and Superior Copper Company, taking over the Black Rock, I cannot say, but I will say that very likely it was in 1906, when Captain Wolvin took the Black Rock. Previous to that time it had been operated as a silver property throughout a period of a great many years. I have attempted to make a valuation of the Alice properties as they existed in the month of May, 1910, and I believe that a fair market value of the Alice group at that time would be about three and one-quarter millions of dollars. As to the possibility of selling in 1910, if I owned this property, I would say that I would not sell, except that I absolutely had it taken away from me; that is, I would prefer not to sell, and my judgment would dictate that I would not sell at that time because in the light of improvement in metallurgical processes and the fact that I have here approximately one mile of the outcrop of one of the strongest veins in the camp, and further that the general development, after quite a period of acquiescence was enlarging, and so developing in a general way, improving and developing the property.

#### Cross Examination.

The acreage of the Alice claims, shown in color, there is 145 acres. My sole source of information was the tax lists, which I examined, and which

were sent to the Alice Company; and if there were joint ownerships in the Paymaster, Saukie East and Saukie West, you would have to cut the Alice acreage down a corresponding amount. I took my geological map from government professional paper No. 74, 1912, and put in the Alice claim lines in red to a rough scale, as near as I could, on that small claim, and excentuated the Rainbow lode going through there as colored upon the original map, and likewise the Jesse and Edith May, I have excentuated, placing green coloring thereon. On the government publication there is a legend on the eastern portion, indicating by the coloring and lettering what character of veins the government department had given each of these; on that the blue color, the legend shows that the veins which are indicated in blue were to be shown or understood as being silver veins; those in red copper veins; and I took the government publication which showed the Edith May and Jesse veins in blue, indicating them as silver, and changed the coloring to red. I am willing now to mean that they are copper veins in distinction to being silver veins. I did not make a substantial change in the government map, which I did not tell Mr. Walsh about; in doing what I did I merely meant to excentuate those veins. It did not occur to me I would be bound to the particular coloring here, which I now notice, and which I knew before in a general way, that the blue was silver and the red copper, but it was so notorious that the Jesse and Edith May

are copper veins, that while I used a red it was merely because I had the red in the coloring, and I am willing to have it construed as my changing to a copper appearance. It was merely fortuitous at first, as was the boundary of my group. The length of the Rising Star claim is 1090 feet; the Alice 1190 and the Magna Charta, 1500 feet; the width of the Valdemere is 297 feet on the north and 300 feet on the south, those are the four claims of the Alice group through which I carried the Rainbow lode, its total length within the Alice group being approximately three-quarters of a mile. I said a mile on direct simply from the fact that the Boston lode here extends over a distance, possibly, compensating for the Moulten, and within the Boston lode we have a very strong ledge of considerable magnitude, and in addition to which within the Curry and others there are some veins compensating for any little differences along the outcrop of the main Rainbow. The exact length of the Alice ground, through which I carry the main Rainbow lode, is 4080 feet. I trace the Rainbow lode about two miles and a half through the country, beginning at the east on the Four Johns, and that is one section,—one mile; this is the second section through which it goes,—second mile; and it continues westerly of the Belcher. I carry the Rainbow down through the Rising Star at the same time taking some notice of the series of the east and west veins, as I stated, coming from the Goldsmith and Silversmith. All that I know about the Alice is what I got from the

surface examination and surface study. I have not been underground in the Alice to any depth; I have been down 30 or 40 feet. Since 1906, I have given considerable attention to this northern portion of the District. I examined a great many claims in detail for the purpose of taking leases thereon, and in March, 1906, I became interested in the property possibly 1800 feet north of this. From 1906, for a period of four years my attention and energy were more or less occupied with claims in this vicinity. I examined a great many of them and up to about 1912. During that period of six years at very frequent intervals, I traversed this property, and in this particular instance I have given four or five days detailed study to the Alice group on the surface. The operations carried on by me in 1906 in this vicinity were on the Eagle. The sum total of the entire operations on the Eagle were not profitable. I netted \$35,000.00 in the five months' lease and continued until my net results were unprofitable on account of the fact that we were not able to market our ore, except at a rate eight times the rate we had received on the ore at previous times during our operations. I stated that the Rainbow lode was one of the largest and most prominent veins in Butte, as shown on the surface. Of course, you look to your vein developments rather than the size of the ledge to determine the value. I know the Black Chief vein in the southern part of Butte. With the exception of the Rainbow, it is the most prominent vein showing in Butte. From the surface

ores and shallow workings it has had a considerable silver production. I placed the Black Rock in the Rainbow lode, the government map does not show it. The Rainbow takes a turn to the north there. When I speak of the Rainbow I mean there are several lodes there that make it up, they vary in course and strike. There is simply a series of veins going through there that I call the Rainbow. I know of my own knowledge that there were workings on the Alice group, simply from the fact that I went through the mill while they were operating, possibly two or three hundred times, and knew that they were treating ore derived from the Alice. On my map,—plaintiffs' exhibit 2, Corry, I follow roughly the Rainbow lode as shown on the government map. The government map shows the big vein system going through the Magna Charta and Valdemere to the southeast and disconnects the blue veins shown on the Black Rock. There is a lapse there, except that we do know from continuous operation that the Black Rock and Elm Orlu and physical fact that they do follow down continuously from one to the other, that constitutes that the Black Rock ledge. I have changed this vein system with my blue coloring as shown on the original government map by drawing this solid blue coloring where the government map shows a break. There is that change more clearly representing the conditions observable there as the result of recent developments. I know there is a very strong developed breaking there, which shows a continuous

development from the Elm Orlu and the Black Rock, and I can trace the Rainbow down to the Elm Orlu, and I accordingly continue that as in my judgment truly represented the actual conditions of the outcrop. I mean there are continuous stope workings following the vein which I took to consider naturally must have followed the vein or else would not have been placed there. The map marked "Defendants' exhibit 1" is another copy of the same map, which I have used as my exhibit No. 2, Corry. I know nothing about the Poser production except that I have observed since 1906 at various intervals,—the fact that they were hauling ore from the ore bins along the road, which I frequently traversed, ore coming from the Poser claim and a shaft thereon. I know that in the Elm Orlu I have seen copper ore a distance of two or three hundred feet east of the shaft. I do not know of any production from the Elm Orlu or from the Poser, excepting a little copper on the 500 of the Poser. I know there have been extensive developments in both claims. Operations have been carried on on the Black Rock lode, I should say for fifteen years at least. Operations prior to the recent zinc operations were confined to lessees taking out more or less silver ore and in doing that they developed the claim quite extensively both on the Black Rock and Niagara. The Butte and Superior were shipping to Basin, I believe, in July or August, 1910. From reading their reports, it seems to me that in 1910 their net profit on ore was sixty some odd thousand dollars; their oper-



ations, however, resulted in a very great deficit. I know as a matter of general knowledge that about the time Mr. Bruce came there as manager, the Butte and Superior operations were neither profitable nor satisfactory.

I know that the Alice property were worked very extensively in early days, I should judge until about 92 or 93. At that time they worked on some of the shallow depths, presumably on the 700 or above. Judging from a reference to their underground mining maps, they did a great deal of work on the various levels below the 1000. The entire surface has been gone over, back and forth, and has been quite thoroughly prospected. In placing my value on the property, I did not consider whether or not there still was great deposit of a silicious silver ore, a low grade which was too low grade at that time, but which could very likely be treated by a percolating or cyaniding process. I did not consider that that was a feature of it, although, of course, it occurs to me but I base my valuation of that property as it appealed to me upon its location,—I considered that the Alice was not thoroughly depleted to the 1500 foot level on the veins there. I considered that the fact of obtaining anything above the 1500 foot level, from which I believe there exists some possibilities, would simply add to its worth. I did not give any value at all to ore bodies that are known above the 1500 foot level. Necessarily I had to disregard the developments down to the 1500 foot level from the fact that I could not possess myself of

the conditions there in the upper 1500 foot. Of course, I considered in my own mind that there were still possibilities above and within their old workings no matter how extensive they would be. I considered that there was possibly old gob that could be operated, that there would be more or less of an assay. I considered that the underground workings there, as shown upon the map, were worth at least,—say, in the Alice, by judging from the plan map, possibly half a million dollars. I would not give that value to the material in the gob, and what might be left to the old workings, what I mean is that it would cost that much to actually replace those workings that are there now. They have an actual intrinsic value of at least half a million dollars, the development and running of those would have an actual value of that amount,—the drifts, levels and crosscuts. I would not say that all operations were going to be below the 1500. It is my belief that there are great possibilities as to the treatment of what may have been too low grade silver ores for them to treat at that time. I do not know today of any ores above the 1500 foot level in the Alice properties that I could say I could treat profitably at this time by any process. I know at different times of efforts and operations being conducted upon the Alice to treat these Alice ores profitably. I remember the mill of the Montana Zinc Company, that Wesiner had there; it was quite an extensive large sized experimental plant. I know the Lexington group to the south. I would not say as to

the similarity of the base ores of the two, from the fact that I have not gone into the Lexington. I have found some veins that have a general southeasterly course, that would presumably go into the Lexington group. I know the zinc plant on the Lexington that was operated for some years by Heinze. In reaching my ideas as to the values of the Alice group, I did not assume that the ores found there are similar to the Black Rock ores, my reaching of the valuation upon the Alice ores was not greatly influenced by the results of the operations on the Butte-Superior, because at that time I considered that if they were successful that that would be a factor of safety upon my appraisal of the value of the Alice property; just as I stated in my examination that personally I would not sell the Alice group at that time for three million and a quarter except that I were absolutely compelled to do so. I believe there are a great many men who could have gone out into the market and sold the Alice property to anybody for three and one-quarter million dollars. It occurs to me that there are a great many men who could readily place that property for a sum in excess of that amount. I place my value irrespective of the possibility of finding ore such as the Black Rock; that was a small factor, of course, because it was in evidence that the general mining operations were expanding, and that this was coming into the market. It was coming into the field of active operations and only in so much as that was the Black Rock considered. Yes, as I stated, it

was considered and was one of the factors that would persuade me not to sell at that time. Generally speaking, I would not put a value of millions on this property, because the Black Rock people to the east had been somewhat successful in their operations, but in this particular case one of the strongest vein zones of the district is there, and very generously mineralized on the outcrop, and to my mind very more pronounced on the development and exploration,—that really was the guiding principle of my appraisal of that property. I would say that they find the zinc ores that are being worked so successfully in the Black Rock below the 1200,—I think possibly the 1200 stopes they have worked there, but whether or not those are ores that are wholly like it or not I cannot say. As a general thing, within reasonable limitations, I would say the ore improves in depth in the Black Rock, for instance I notice an improvement between the 900 elevation and the 1200 in ground in very close proximity to the Black Rock, on the Pilot Butte. That is an entirely different system of veins; that vein is a northeast strike but from memory I cannot give you the absolute strike of it, it is strongly northeast. I would not change the other veins in my district from that one observation. If I had considered the possibilities of the Alice strictly from its zinc possibilities, I would be inclined to greatly increase my estimate as to its value. I did not consider the zinc possibilities in arriving at my value except in a general way, whether the mineralization was low grade sili-

cious ore, or whether the copper came in with increased depth, or commercial bodies were found at intersections of cross veins,—why, those were considered generally as being taken in my general appraisal of the property. I did not intend to change the position of the veins on the government map any more than I have already indicated, except by showing continuity as I believed it in the Rainbow lode, and as shown on the surface. If in drawing that line I veered over or changed any other, it was secondary only to showing, as I believed, an uninterrupted continuous vein system. My exhibit, plaintiffs' exhibit 2, Corry, was used as a basis and is adapted to show to the best of my observation and judgment, the conditions existing upon the surface of that immediate area; and I have drawn it in the different way than shown on the government map. I imagine the greater portion of this surface development, that I found there, was there when the data for this government map was prepared. I notice on the government map where the letter "a" is marked, that there is shown a vein cutting right through and breaking off without any connection with the vein to the north, there at the railroad. On my map I have continued that into the Elm Orlu; that is another distinct change from the government map. There is no new development on the surface that justifies me in making that change other than the following down along the strike of that vein, it is quite certain to me that there is no great lapse in the continuity of that

vein. I differ with the government map in minor details as to the position of that vein. Besides jumping it from where the letter "a" is marked, or to the Elm Orlu, I make another connection through to the Black Rock. I go from one vein to another through there as indicated upon exhibit 1, Corry, by drawing a vein diagonally through where the government does not show any, I connect from where the "a" is marked all the way to the Black Rock. There is no new surface development that justifies that, except that that is my best judgment and from all data that I am able to possess myself of, that truly represents the conditions and the position of that vein outcrop at that particular place. The data that I possessed myself of in addition to the government map is that I have seen some underground maps of both the Elm Orlu and the Black Rock, which afforded me some data upon which to base this. I have seen maps of the Elm Orlu and Black Rock that I would consider were of such reasonably close elevation that it demonstrated that they were one and the same ore body,—same vein. I do not recall now the depths beneath the surface, but it was down to 1200 anyway. Those maps of the underground workings would help me fix the vein on the surface, that I have drawn through there, because of the fact that it is reasonable to infer that a vein shown in the continuous ore bodies beneath the ground, while it might have a few lapses along its outcrop, in the surface would be fairly continuous. I cannot recall whether the workings

I saw in the ground showed a north or southerly dip. If I were going to fix the apex of what I saw underground, I would necessarily want to know the dip. To make my connection through to the Black Rock, the only level I spoke of having been in in the Black Rock was the 1200, I would not say that that information was the full data I had, which would enable me to draw that line to the Black Rock easterly. I considered it from all possible information I had, and I believe it fairly represented the condition of affairs on the surface. I believe that that apex goes through the Black Rock. I would not say at the present time, without further study, that outside of that particular point that you instanced, that there was anything further than my general belief, based upon the best possible information that I could possess myself of. I had the surface to look at. I saw the 1200 level of the Black Rock and saw some deep maps, but did not notice the dip of the vein, and in addition to that my knowledge that a strong vein, such as this, seldom if ever breaks off in a very short distance. If the government people saw fit to extend them in a different direction, they placed a different construction on it than I did. In placing my valuation of three and a quarter million dollars on the Alice group, I said distinctly that I had in mind the asset of that portion above any workings, becoming an asset at this day and age from an increase in the method and the facilities in the treatment, decreasing the cost and necessarily they were assets. So far as the ore

bodies exposed in the Alice to the 1500, there is a possibility that some time there is something there that may some time prove of value. I gave you half a million dollars this morning, as the value of the workings; that is outside of my valuation of three and a quarter millions. I place the value at half a million dollars instead of three-fourths or one hundred thousand dollars from the fact that I have not been underground. My only source of information has been what I supposed was the official report of the Company, and in that they present a map which shows a great many hundreds of feet of workings of different levels.

Q. What possibilities are there in the Rainbow lode then, in your mind, for or in that lode itself, or the leads that make up the Rainbow lode. You don't know of anything above the 1500, below that what do you have,—do you have zinc, copper or what?

A. Well, I would somewhere from the surface to the bottom,—I am led to believe there are bodies of zinc ore there from the fact that the dumps are considerable quantities, which would not ordinarily be hauled there.

What I have told you about those ores is simply a possibility that sometime they would be worth something. I do not know about the conditions of the ores on the 1500, or their grade of zinc.

Q. You do not know so far as any other developments in the Alice disclose ore bodies, or other character of zinc or silver; you do not know about



what the developments now in the Alice expose,—any possibility of that, do you; in other words, that the ground is sufficient at these points where you make projected veins, to show that they do not exist there, at least above the 1500?

A. Well, that I could not say.

I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated. I would expect at some elevation within that northwest ledge, in its traversing or passing through the Rainbow, or its juncture with the Rainbow—I certainly would expect a deposit of copper ore at some depth. By a juncture I mean a coming together,—a coalescing of two veins which up to that point had separate existence; or an apparent juncture where the material would be so crushed that the identity of one or the other could not be absolutely determined. One vein cutting off another through it is not a juncture, that is one traversing. The Rainbow lode series are an old east and west series. You also have a copper series to the south,—the Anaconda,—the old east and west series of veins. They are entirely distinct in their characteristics, age, and everything from the northwest-southeast veins. Wherever you find these northwest-southeast

veins like the Jesse, and Edith Hay, and the others I spoke of, they have invariably faulted, and go through east and west veins. So in the Elm Orlu or anywhere else, you are not going to have a juncture with the Rainbow veins, but there could be a juncture of similar easterly and westerly veins that possibly would be mineralized from northwest veins along their course; possibly mineralized from the channel of solutions traversing, say a northwest vein. I do not know distinctly of any east and west vein in this vicinity carrying copper minerals, except that it would be accidental; I cannot conceive of how such a thing could happen. The Elm Orlu copper vein, which I say I saw close to the Rainbow series or lode is a southeast and northwest vein. When that vein was forming, the Rainbow ledge had already been mineralized and the other one comes along and cuts it, and you have no juncture there.

Q. Or not mineralization particularly?

A. You could have, in this locality of this eruption of the Rainbow. As a geologist or mineralogist, I do not know that I have ever seen that in Butte, or ever heard any mineralogist claim such mineralization as that in the east and west vein.

I do not despair of finding copper ore in the Rainbow lode itself. The Rainbow lode has been developed from the Rising Star on the west on through the Alice ground to the Elm Orlu, and I carry it to the Black Rock, and the Alice is 1500 feet and the Moulten 1500, and I know of no place where copper ore has been found in the vein it-

self. Somebody has to finally find something in that vein, and I do not consider that sufficiently deep development has been done in that vicinity to tell the last story. This then is classed not as copper bearing but as a silver vein. It has a different geological formation than the copper veins of Butte. As to the northwest and southeast veins, in the Alice ground that may carry copper ore,—I believe the Jesse and possibly the Edith May are the only two. That country has been pretty well developed underground. You have a crosscut from the Pilot, from the south, going up connecting with those workings. You have that country pretty well developed in that immediate locality down to the 2200 level, that is the locality nearest the Alice ground. There is a series of northwest veins over in the southwest portion of the Alice group, upon which considerable work has been done, judging from the plan maps, namely, the Currie, and Blue Wing, and upon the surface thereof can be seen veins striking northwest, that to my mind are worthy of further development. I do not know of any place either in the Alice ground, or outside of it, that copper ore has been found in any of the veins I have last referred to in the Currie or the Blue Wing. There has been extensive development to the south of that in the Chief Joseph and Lexington. I do not know of any place there where there has been shown copper pointing in that direction.

Going back to the Jesse and the Edith May, I know of the Jesse vein east into the Adelaide. I

do not know it down through the Mountain Chief, the Right Bower or the Ballaklava. I know there was a controversy by the Ballaklava, its contention being that the vein in which it had the big ore bodies was in the Jesse vein. The position of the apex, that I put on my map, exhibit Corry, No. 2, is a close approximation, showing that vein as it goes out of the west end of the Adelaide. The end line of the Adelaide is about 600 feet long. The apex of that vein possibly goes right through the northwest corner of the Adelaide, which would be at least 200 feet from where I have placed it. I simply made it as a sketch showing the general course, naming the other as close an approximation as I could. I am more familiar with it underground. Of course, it is the position of the apex that we are interested in here. I know the Jesse vein as far westerly as the crosscuts in the Speculator. I have found it on the surface of the west end of the Badger State. I do not know it at any point underground of the west end line of the Gem, shown on my map. I imagine I would be easily within 200 feet of the position of the apex going into the Badger State because the next point that I have is a point on the west end line of the Badger State, where I find the vein projecting southeasterly, and there appears to be that word "Jesse vein." With the surface workings the wash and the railroad fillings and things, by a sufficient examination, you can correlate and carry a vein through that distance to the surface in almost any direc-

tion. It is fairly possibly to correlate precisely in one vein. As to whether or not it is the particular vein disclosed in this working hundreds of feet deeper it is difficult to say.

Q. Now, your Jesse, through the west side of the Badger State, how far did you jump that across the surface there,—how far from where you cross the west end line of the Jesse do you know it in any cut or working, or anything showing it?

A. I should say a distance of possibly 150 feet southeasterly where there apparently is a break in the vein; and a little further to the south I pick up a vein with the same general course, the same characteristics as the one I just followed down.

I pick it up in the outcrop along the ridge in a series of scattered holes. I want to go on record that substantially such an outcrop could be found on the Badger State claim by a series of holes as disclosed there, to-wit: beginning at the northwest corner of the Badger State, going down a distance of 125 feet there is encountered a vein six to eight feet wide, and which has a strike of north 85 west, going down a distance of about 165 feet southerly therefrom there is a vein show in the series of holes for a strike north sixty west, which continues northwesterly a short distance when there is a spur going off therefrom in a general easterly direction. I do not know who drew this black line on complainants' exhibit 1, but evidently it is indicated to represent the Jesse vein from where it is carried through, and it carries the Jesse vein through the southwest corner of the

Poser, and way up here. There is a point a short distance north of the northwest corner of the Mill View, a vein which strikes north, general northwest strike, north 70 or 75 west. That is of some importance in connection with the Alice ground whether that goes through the position, through the southwest corner of the Poser, or whether it goes where I place it, it certainly would make a big difference in the amount of the apex, the amount that would be found, of the strike, in the Alice ground. This red line of mine on my map shows there the Jesse vein, or some parallel vein going up through that country, that is my idea, I would not presume absolutely to determine its relation with anything below without having sufficient data to do so. It may be a split for instance from some vein there, having at the point of observation that particular strike. The fact as to whether or not some other vein is pointing towards the Alice ground, and is an ore producing vein or a parallel vein, or a spur that never produced, would certainly be a factor in determining its value, but my approximation was placed only incidentally upon the possibility of these northwest veins going up. On my exhibit 2 Corry, I carried that Jesse vein right on through the Rainbow series, and show it a considerable distance to the north, the scale of that map being approximately 400 feet to the inch; and carry it about 1250 feet northerly of the Rainbow lode series. I believe that these northwest veins do, or will be found, to go through the Rainbow ledge, with an individuality

beyond. I have never seen this vein doing that. I cannot say where there are any workings north that would justify the 1500 foot projection north of the Rainbow lode series. Going back to the Jesse vein underground,—all these northwest-southeast veins carry their ore in shoots,—are pocketed, as the miners call it. They do not have the regular ore bodies that the old east and west, the Anaconda system, has. The mineralization is more concentrated; and you find these barren places in the veins for long distances both on the dip and strike generally. When you get away from where you find your shoot, it is simply a question of possibility of finding another; there being nothing there to indicate whether the shoot is there or not. I know of ore in the Jesse vein, in the Tuolumne and in the North Butte; also in the High Ore and the Adelaide,—that is my only absolute knowledge of it. I do not know of any copper ore of my own knowledge that has been mined from the Jesse vein. I have never been in the Badger State workings. It is about 2200 feet from the west end line of the Gem to the Alice ground, along any possible course of the Jesse vein. It would be very discouraging for you to follow along that Jesse vein, its developments in depth, down to the 2000, 2200 feet westerly from the Gem line, and did not find any ore anywhere. In the Mountain Chief and the Right Bower they had ore as high as the 700 and the Alice ground has been pretty well developed to along 700 feet. I am not as sure of the position of the Edith May

vein being correctly shown on the map here in the red as I am of the Jesse, I know much less of that vein underground. I do not know of any place west of the Badger State shaft where there has been any ore found in the Edith May vein. I do not know the Edith May vein, underground east of that. I have been underground in the Edith May in the North Butte at the crosscut at all the levels more particularly the twelve and sixteen; I do not know of any ore either in the Jesse or the Edith May veins beneath the 2200. As to the general history of that vein, when the North Butte Company got down to the 2200 they found the vein impoverished, and they have not gotten through it as far as I know. As to the ore production of the North Butte last year and the year before, I stated that its big production was from the Jesse vein,—the North Butte commenced operation about 1905,—and within a few months after that time it was mining high grade ore in great quantities from those veins. That continued until they got down to the 2200 and since then the production of the North Butte Company has not been from either the Edith May or Jesse. Going westerly on the Edith May there are some outcrops having that general northwest strike. It goes in close proximity to the Moose shaft. As to what shows that, perhaps 150 feet southwest of the Moose shaft upon the Auroria ground, there is a strong northwest vein, about north 75 west, the vein is six to eight feet wide, will possibly project through a distance of about 150 feet,—would be 100 feet



south of the position on the ground of the Moose shaft, approximately 150 feet southeasterly of the Moose shaft; and if you project that Edith May vein, it would go possibly within 100 feet of the Moose shaft. I sketched a projection of the Edith May north to show the turn there of both the Jesse and Edith May, and as to whether or not the veins that I do pick up in close proximity to the Alice are absolutely those, as stated, or not, I could not say but the mere fact exists that at those points are veins having their general strike and of considerable prominence; and while I have shown the Edith May immediately north of the Moose, it is somewhere within 100 feet of that particular point,—it is an approximation. If it swings around to the south and westerly instead of being to the north of the Moose shaft, that would make some difference as to where it would hit the Alice ground. I have heard it uncontradictedly stated that the Badger State gets its ore from an old east and west vein called the Badger State vein. Directly speaking it is not an east and west vein, it is north 76 west, passing through the Badger discovery. I do not know its course as to whether it would go through the Alice ground at all. I have never studied that out on the surface. I believe I have given you all I can think of about the Alice and Edith May copper veins that would lead you to expect they were anywhere in the Alice ground with ore in them,—to find in the Alice ground copper ore bodies. I do not know of any spot in

the Jesse or Edith May veins where copper ore has been found west of the west end line of the Gem. Generally speaking the history of the Butte vein is that they carried silver on the surface, and you got copper at depth,—I mean the copper veins. I do not mean the Rainbow lode, the Black Chief lode, or the Nettie, or the Emma. I do not mean the true silver veins, they carry silver from the surface, and do not carry copper so far as they have been developed. I was referring to properties that have developed from silver veins in depth into copper properties. The reason that you do not find copper until you get at some depth in the true copper veins, your northwest-southeast veins, is that your copper values have been leached out, and redeposited over the surface, leaving the silver there alone, down to the point where your oxidization ceases. That is what has happened in the copper veins. To my notion I see absolutely no reason whatever to preclude the possibility that we will obtain copper mineralization within the Rainbow very likely along the course of any northwest veins, traversing said Rainbow. Every geologist and engineer knows why I do not find copper clear to the surface and why you find the ores particularly enriched in depth; and from that there is no argument or analogy that the silver you find on the surface or the fact of its presence in the surface means that it has been redeposited at depth, and leached out on the surface. I make up my valuation of three and a quarter millions of dollars as the value of

the Alice property, as follows: I consider the Magna Charta three-quarters of a million; the Valdemere a quarter of a million; the Alice three-quarters of a million. I would consider that the remainder of the group would reasonably be worth a million and a half.

Q. For the possibility of finding something that never has been developed in the ground,—the possibility of finding silver or zinc or copper. Is that true? A. Taken in consideration with its position on this Rainbow ledge, very strongly mineralized vein on the surface, of considerable continuity, upon which some work has been done in times past, resulting in some values being obtained therefrom. I do not know that that ground has been mined to the 1000 foot level of everything of value in May, 1910. It has been my experience that some of the early day working was not done to a profit, that is under the conditions that obtained at that time. Certain grades of ore could not be handled economically to a profit and that since that time times have changed and that as profit has been made from ore that twenty years ago was worthless. There has been no particular changes in the treatment of silver ores in the last four or five years by the same general application of the percolating method of cyaniding ore successfully. Principally it has been done in Mexico, but it is in actual course of operation in the states here, and has achieved success. Any ore with a content of sixteen ounces of silver can be handled by that method; however, I do not know

of any sixteen ounce ore left in the Alice. If I had that property tomorrow, I would simply hold it for the purpose of making profit from it, pending the time I could get ahold of enough money myself to interest someone in its thorough development. In addition to the value of the property, I would say you would want at least two and one-half millions of dollars for the entire proposition, as a mining venture.

Q. With nothing but possibilities of any return at all,— you would have over five million dollars in the property—is that the way I understand you? A. Well, I believe such an investment would be justified in that particular case, it being situated as it is; to my notion that would justify such an investment; it would be of that large a scope. My first attention would be drawn to treating the ores that would be exposed in the workings,—the silver ores; and, second, the further development of the zinc ores, and the method of treating the ore if it is there, and the thorough prospecting of any intersecting vein especially any of the northwest series as to the copper prospects.

Q. Now start with the silver,—of course, you do not know of any silver of sufficient value now. Take your zinc,—some of it shows it is developed thoroughly,—the zinc ore bodies are developed pretty thoroughly down to the 1500 foot level, they show the base character of ore and iron manganese, fine silica. That cannot be made to pay by

any process today. You would have to set down and wait on your zinc?

A. Or experiment along the modification of known processes to achieve a separation; I would of course utilize all my efforts to perfect a method of treatment.

I naturally would go to a zinc expert and if he could not give me any hope, it would next occur to me to consult metallurgical experimenters charging them with experimenting along the line of protecting their processes,—a combination of known processes. The copper ore produced by the Badger State is the nearest copper producing property of any consequence to the Alice group. Assuming that it runs about  $3\frac{1}{2}$  percent; I should imagine there would be a profit to a large operating company of a couple of dollars per ton. Assume you are mining 1000 tons a day with your own smelter, I imagine that you would make a profit with copper at 14 cents. A production of 1000 tons per day would be a pretty good production,—hitting a vein pretty hard. That would be \$2000.00 a day, \$60,000.00 a month, \$720,000.00 a year. My investment of three million and a quarter should draw interest in Montana, if safely invested, of five to six per cent; six per cent of three million is \$195,000.00.

I know some of the claims of the Lexington group. The distance easterly and westerly there on the general course of the vein between the millsite on the Adelaide ground to the west and through to the Lexington on the

east is about 1900 feet. I am not familiar with the underground workings of those claims. I know nothing of the late history of the Lexington group. That group is closer to more of the known copper producing veins than the Alice group. I thought that the excitement as to values, etc., up there had settled down in 1910 to a steady increasing interest in the general expansion of the Butte district. The height of the excitement or demand for property in that section was in 1906 or '07, thereabouts, until just of late, possibly in 1911 there was an increase again; an increased demand for property in that vicinity, or easterly thereof,—north and east of the Black Rock. That was the Black Rock buying, and the Rainbow lode development buying, the Congdons. From the more advanced state of development over on the east side it appears to me that the chances for immediately finding copper deposits are better in the Butte and Duluth and easterly from that, than in the northern portion of the district,—the Alice country. Captain Wolvin's ground is right on the projected course or strike of some of the east and west veins, and in addition he has this enormous deposit of silicious ore or carbonate,—I don't know what you call it, silicate of copper on the surface there. There is a great tonnage, I don't know how much. It has been there for years. I don't know what the group that Captain Wolvin has consists of. I know he has the Montgomery and the west half of the Altoona, and I know where the Macaroni is.

I know they are included in his group and part of the Amazon. He has about fifty acres. If I were told that he paid \$175,000.00 for that group within the last two years, I would say as to that being a reasonable price for it, that it was a gift to him. I would think that it was far less than they were worth. In placing a value on this fifty acre group at within the last two years, I would say as an undeveloped property there and as a property against which there is a common feeling as to the possible depth of any mineralization,—I would say roughly that \$100,000.00 for a twenty acre claim would be a fair price. I would consider the effect that a group together would have and would not place the value upon an acreage basis. Putting it upon an acreage basis, I put a valuation of over twenty thousand dollars an acre on the Alice group. I know the Horse Canyon ground east of Captain Wolvin's pretty well, it joins his property. It is pretty good ground and pretty well located. That claim has an acreage of about 16 acres I think. I sold my half interest in that in the last couple years for \$7500.00 Mr. Mattison representing the North Butte Company came to me and told me "I see that you have a half interest in a particular claim," mentioning the Horse Canyon, "so and so has another half interest in that, I don't care whether it is your half or the other, all I want is a half interest there," and at that time I had obtained some options for Mattison and I know absolutely,—I was instructed to notify the people I was dealing with that all that was necessary was



that Mattison obtain a small interest which would entitle him to a partition suit, and I being without money and being confronted with a partition suit, I would have taken a four bit piece and regarded myself as lucky. In my estimation, the value of that claim is \$150,000.00, but under the circumstances I sold my interest for \$7500.00. I know of other ground that has been purchased there about the same time by Mr. Mattison and I know some of the prices that he paid. I don't know any of it that brought more than \$2000.00 an acre. That included the ground immediately east of Captain Wolvin's ground, and to the north within the limits I was asked about as possibly copper bearing ground. The North Butte has picked up a big group there, and as near as I can figure out they have disbursed in cash about \$800,000.00. I should imagine that they paid less than \$2000.00 an acre for their ground except that I do not know as the stock consideration. As near as I could obtain and keep track of the different purchases, by interviewing the different people, it ran in money to about \$860,000.00, and as to further stock consideration I cannot pass on that. I have been under the impression that in cases where there was no outstanding interest to frighten anybody away, that ground was purchased right in there for something like \$2000.00 an acre, cash purchase. I am personally interested in a great many of the claims, beginning right east of the Gardens and this ground we have been speaking of, and running up over the main ridge and have



patented a great many claims there, and have expended a large sum of money in connection with them, and I am still holding them. I am, of course, of the opinion that this property is going to prove to be very valuable some day. I believe that the possibilities of Butte are not fully determined, its limitations, by far, because as a boy in all the years gone by, it has constantly been the undercurrent of opinion that we were about through in Butte, and as something has always happened to continue on the history of the camp and new discoveries were made, and that of itself, having gone through that, justifies me in expecting a great many discoveries in years to come of considerable moment. As to whether I am particularly optimistic about the conditions I have expressed my ideas of it, and will leave that to others to judge. If I had not been optimistic I would not have patented and developed that great amount of ground I have going over the hill. I have met with a lot of adverse criticisms.

As regards why I put the value of the Alice property at three and a quarter millions exactly and not three and a half millions or four or five,—to my mind it would appeal to me as a venture calling for sufficient,—for a total investment of about five million dollars. That would carry you,—possibly you would not require but a part of that, but that is my best judgment as to the value of the property, and I arrived at it as stated there, analyzing it to the best of my ability, I believe it is a fair appraisal.

Re-Direct Examination.

The acreage that I gave is the acreage that is exhibited on the map in orange. With reference to the Alice, the Eagle is about 1800 feet northerly, it does not appear upon this map, but would be in a position about two inches beyond the border. It appears on the district map. I should say it is about 1800 to 2200 feet north of Plover No. 1. That was worked for silver ore in the early days, and work was abandoned, and I went into the old workings and obtained some little ore there and was interested in sinking the shaft still further, and later was one of a number who leased therein, and during that time took out some considerable amount of silver ores. As to what is done with the ores taken from the Poser and Elm Orlu, I believe the zinc ores are to be treated by the Clark people in a plant that they have newly constructed. The copper ores of the Poser, I believe, have been marketed at custom plants, possibly Clark may have treated some of the ore at the plant, but they are not treated on the ground. They are constructing works to treat the ores for the Elm Orlu two or three miles south of town. I cannot say whether the plant is in operation now. It was to have been started by now, I know of the character of those works only in a rough way, as they have been outlined to me, but I believe it is the modification of the flotation process, and is being operated under a royalty basis from the Mineral Separation Company. They are employing some process for the reduction of zinc ores. I do not

know where I got my information about the date when the Butte and Superior first began to be operated at a profit. I cannot say even now as to when they operated at a profit. In pursuing the purpose to buy mining property of this character in a case where you found access to the lower levels, prospective purchasers for the purpose of learning anything that is shown in the lower workings, and above, naturally go to the records of the Company, preserved by the Company, or any of their officials, any reports made on behalf of the Company, or for any individual to whom they could look, or find in the possession of such reports, and following next would be the inspection of the underground workings thereof. I read over a report of Mr. Maynard on the Alice, and also one of Mr. Blake, and the bound volume of reports covering several years made by the President of the Company to the stockholders,—apparently these copies were issued to the stockholders; and in making my estimate of the value of the property, the information that was disclosed by these reports was one of the factors. There was a dispute as to the identity of the Jesse vein with the vein of the Ballaklava in the lawsuit between the Butte and Ballaklava Copper Company and the Anaconda Copper Mining Company to which I referred. My attention has been called to the fact that I projected the Jesse vein through the Alice claims, and beyond some distance in the map marked "Exhibit 2, Corry." This vein is so projected beyond the Alice ground in

the official government map for a distance of about 350 feet. I believe that Mr. Weed had charge of the work which is represented upon the government map, or performed the work, or it was done under his direction. This plaintiffs' exhibit 2, Corry, is Sheet No. 10 of Professional Paper No. 74, United States Geological Survey, and my impression is that Dr. Walter Harvey Weed did it. It speaks as of date 1912. I know that there is copper ore in the Emily vein; the general course or strike of that vein is northwesterly. I do not know of any vein in the neighborhood of the Badger State, other than the Jesse, which would be likely to produce the amount of ore which is extracted through that shaft. I spoke about the possibility of working ore carrying sixteen ounces of silver under present processes. You are to understand that it was not possible to work silver ore as low grade as that in the early days. During the last eight or ten years, leasing, under ordinary conditions, we figured that thirty ounces of silver ore was about as low grade ore as we could possibly handle; and under present processes that ore carrying as low as 16 ounces could be worked at a profit. Considering the history of the Butte camp, as I know it, from the information that I have, I would say that it was most natural to expect still remaining in the mine, ores of the upper levels of a grade lower than could be worked, when it was operated, and high enough now to be operated at a profit. I would naturally expect a class of ore in excess of 30 ounces

remaining in the levels. Anybody who undertakes to work virgin ground in Butte, takes some chances. For instance, in the case of the Pilot-Emily vein, there was a shaft 60 feet on the surface and in that was shown some copper carbonates, and other than that I do not believe I have any information personally of any other developments that would lead one to believe that there was a copper producing property there. The only kind of consideration then that anyone could take hold of a property like that and expend money for the installation of machinery and the development of the property, would be upon the belief, and with the expectation of encountering commercial bodies of some character or description. Anybody would have to figure as to ore being there on the basis of the surface; study of the surface outcrops, the adjoining property, or its position with respect to other properties. In the case of the Ballaklava, spoken of here a while ago, with reference to the ore that was disclosed in it before it was purchased, why to a depth of 80 or 90 feet in the perpendicular shaft upon the ground, there was absolutely no ore disclosed,—in fact, the vein was a very churttly lean vein, and not any too encouraging. Take the Badger State for instance, prior to the sinking of the Badger shaft, there was no opportunity to my knowledge to look into the ground and find ore in such great quantities as apparently existed, except possibly data from the producing veins elsewhere would lead anyone to sink and investigate at that particu-

lar point. I should say it is about 1800 feet from the Badger State shaft to the point nearest eastward that I know is profitably worked. It is about 1200 or 1400 feet westward from the Badger State shaft to the Alice ground. I don't recognize that there was any less chance of failure in sinking the Badger State shaft than there is in sinking the Moose shaft. Speaking of the time the Badger State shaft was started, I should judge there were not any greater prospects than so far as I was able to discern, of success in that work, than there is in the sinking of the Moose shaft. My impression is that the Butte-Superior enterprise was not a success immediately upon its inauguration, the trouble being that they were passing through a period of experimentation, perfecting a method of treatment of their ores. They commenced that I think in 1907, or shortly thereafter. In other words, my idea and impression is that they had to perfect their method of treating their ores before they were able to make a success of their enterprise. Other than the Butte and Superior people, the buying that was going on in the neighborhood of the Black Rock in the last couple of years, was being done by the Rainbow Development Company and the Butte and Duluth; that was from November, 1911, to February, 1912. I was employed by some of them,—I obtained some options and turned them to Captain Wolvin and Mr. Hays at their express authorization. This property over to the east, concerning which I was interrogated, is on the eastern edge of the local

flat, or basement, the foothills of the main range. That is approximately two and three-quarters miles from the Alice property. From the old producing region of Butte, you descend into a flat covered with wash, and then you rise upon the other side of the flat up the slopes of some foothills abutting the main range. That region is generally referred to in that country as "across the flat;" and is quite separate and distinct, from the old Butte region, and separated by this deposit of wash in the flat. The real value of that region over there has been a matter of very serious controversy for many years. The Bullwhacker is one of the best known claims in that locality. It has been worked intermittently for a great many years. A good many people have taken hold of it at one time or another. That is true with respect to portions of the Butte and Duluth, and same may hold with respect to the claims lying to the north, the Bertha, the Rising Sun and the Sarsfield. As an entirety that region is not regarded as a steady producer now. The development has not been sufficient there yet; with the exception, however, of the Pittsmont, which I will say is a developed regular producer. Its properties are more generally in the flat itself, while these others I speak of are still further beyond and eastward and up the slope. Generally speaking as to the values of property over in that easterly region, as compared with values of properties on the Butte Hill, including the Alice country, I cannot see a great difference. If the same surface connections



that appear on the flat would appear on the outcrop of the Alice, that would greatly enhance my estimation of the value of the Alice. The prices of property over in that eastern region compared generally with prices of property on the Butte Hill, including the Alice country, have been far less. The principal claim of the Butte and Superior is the Black Rock; that was worked as a silver claim in the early days.

ReCross Examination.

I would not compare any of the Alice claims in value with the Black Rock, as was shown and developed at the time the present Company took it over, excepting that the Black Rock was an original silver producer, and was and had developed considerable quantities of zinc ore,—ore that had been proven at the present time to be high enough in zinc and silver to be very profitable,—millions of tons of it. I know of an instance of an engineer giving a value of a million dollars to property that he had never been in; that was probably not the ordinary way now-a-days. Being in Butte, with the idea of a value of the property, it rests upon the individual engineer himself to make a sufficient determination of that to stand or fall upon that appraisal. Information contained in the reports I have referred to, made by Mr. Maynard and Mr. Blake, that assisted me was the fact that invariably the difficulties that were experienced were the presence of zinc ore, zinc blende, that seemed to be of very frequent recurrence; that their workings showed their deposits of zinc



blende. Such reports afforded me a further insight into what was down there, but I cannot state explicitly what particular sentence it was,—merely a confirmation of my expectancy of their finding zinc ore, which I considered to be confirmed there by their alluding to the presence of zinc ore, also in the annual reports of the president of the company there appeared a map purporting to be the underground workings of the properties of the Alice; that was of some consequence and assistance to me. I imagine everybody has known for years and years that there are large quantities of zinc in the Alice mines. One of the particular things that appeared to me in the reports was that the value, the grade of silver ore treated in their mills, was something in excess of 50 ounces; that it was somewhere around 70 ounces. I believe their average up to 1893 was always better than 16 ounces in silver.

There is a vein exposed in the Emily workings, which has been alluded to as their vein. The Emily vein has been drifted on the 1800 and 2000 foot levels of the Pilot to the west. I surveyed those levels out to that extreme west end. I do not attach any significance to the Emily vein from my knowledge of it, in connection with the Alice properties exactly, except it is a northwest vein, and has some copper ore. If you go from a width of 20 feet from the plane of the Pilot shaft westerly, still in the Pilot ground, and your vein has gotten down to two feet, it would not be very favorable to the Alice ground, without further

work. With reference to the sinking of the Badger State shaft, I expressly stated that the planning of that was evidently finally confirmed by knowledge of the underground workings elsewhere; but that upon the surface itself there was a sufficient showing to investigate. I imagine there was sufficient shown at the point where the Badger State shaft now is to justify work. I do not know of a mining company in Butte putting down a shaft 2000 feet without crosscutting and knowing something of what is under it, that would probably be very unusual. As to the Pilot, there are a number of pretty strong looking veins showing on the surface. There had been a great deal of work done in the Elm Orlu before the Pilot was struck. There was also work done upon the Berlin; I believe there were crosscuts all through the Berlin on different levels. I made a private report upon the Pilot to the owner that was later used and incorporated in the statement to the purchasers. I base my advice as to the Pilot wholly upon its location and surface showing. I would not claim that the whole of the expenditure upon the Pilot was done wholly upon my recommendation, but that was a factor in it, because that was used. The Mountain Chief was quite a famous property in the early days. The Anaconda Company must also have had workings to the westerly of the Ballaklava at the time they started, but I don't know of that personally. I spoke about this ground to the east, over there around the Wolvin ground, being separated from Butte by a deep val-

ley,—a wash there. In my belief the wash hasn't anything to do with the geological conditions. You do not get veins in the wash anywhere. The Pittsmonst shafts are pretty well over on the eastern side there. They approach closely to the flank of the hill, as much as 900 or 1000 feet. That is between the Butte and Boston Placer. At different points in the Butte and Boston Placer, they have got a good ore showing. North of that, and easterly of the Pittsmonst shafts, is the Tropic shaft, which is pretty close to the hill. I believe that the non-co-ordinate veins do extend continuously from Butte into the main range; that is, it is not possible for me to co-ordinate them. Generally I am of the impression that the veins go right through the flat and right through the main range. I have no doubt that they are ore bearing and will prove to be ore bearing. There has been no such amount of development on the east side as there has been on the Alice. The nature of the development on the eastern portion is shallow. The East Butte, formerly the Pittsmonst shaft, the Tropic, and the Ida Mountain, are producing good ore. If I had this showing on the Alice, that I had on the east side, I would add still more to it and vice versa, if I had the Alice vein on the east side, with the showing that is observable on the east side, I would add still more to it. The Alice worked out to a depth of 1500 feet on the east side, with those surface showings would in all probability be a producing property. Exhibit 1, Corry, is a copy of our 1905, Harper-Macdonald

map, since which time there has been additional claims and an entire re-arrangement of the ownerships, and plaintiffs' exhibit 1, Corry, does not attempt to set that forth.

Re-Direct Examination.

There was a considerable area around the Butte and Boston Placer patented as placer ground, and subsequently contentions arose between claimants claiming quartz leads and the placer patentees. There are no veins over there that I know anything about of any such size, for instance, as the Rainbow lode. Silver Bow Creek is between Butte Hill and this eastern country. Years ago I remember there being a general impression that the copper producing area was bounded by the Silver Bow Creek on the east. The Reins Copper Company was operating just east of the Creek.

Re-Cross Examination.

It has been later disclosed that Silver Bow Creek did not have anything to do with the ore bodies. I have notes of veins running out, years ago, beyond the limits of that creek.

Re-Direct Examination.

There was a theory that Silver Bow Creek marked the fault cutting off the vein.

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[Testimony of Walter Harvey Weed, for Complainants.]

WALTER HARVEY WEED, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Direct Examination.

My name is Walter Harvey Weed; I live at

Houghton, Michigan. I am a geologist and mining engineer, and have followed that work since 1883. I am a graduate of the School of Mines in that year, and immediately took up the work as Assistant Geologist on the United States Geological Survey in Yellowstone Park; I maintained my connection with the United States Geological Survey, and also as geologist, until the year 1906; in the course of that work I was first assigned to the investigation of the Yellowstone Hot Springs, and afterwards to an investigation of the coal deposits of Montana, and that was followed by special investigation of the ore deposits of the Little Belt and detailed investigation of the Marysville region, and detailed investigation of the Butte, Montana, region; during that same period I had leaves of absence, and made many investigations in Mexico, British Columbia, particularly the Boundary Creek District, where I was employed by Mr. Samuel Untermyer in the investigation of ore deposits; and have been engaged in Nicaragua, and many localities abroad,—Cuba, and so forth.

I began my study of the Butte District in 1896; I had visited previously. As a result of that work I was employed as an assistant to Professor Emmons, and as a result of the special folio work was issued by the United States Geological Survey. Since severing my connection with the Geological Survey, I have been here repeatedly in connection with law-suit work, or in connection with work that was controversial to determine the apex

rights of various claims for Senator Clark, and in the Original case, the Parrot case and the Elm Orlu case, there were controversies as to the ownership of ore bodies. I made a second study of the map, first under the direction of Professor Emmons, and subsequently, after his death, I published it myself. That work extended from about 1898 until about 1905, or '06, and it was published as professional Paper No. 74, issued from the government press in 1912. The map on the board is taken from that report,—plaintiffs' exhibit 2, Corry. I can say from my investigation and experience in the Butte camp, that I am fairly familiar with the ore bodies in that section; I have had to investigate the Butte camp for the government, and this examination for Senator Clark, and also an examination for the Butte and Superior, in which my partner did much of the work, and I have had to examine and look over various groups of claims during my connection of three years or more with the so-called Lewisohns,—with the Butte Development Company, and in the course of that work I have had to pass on claims in the vicinity of the so-called East Ridge, and in the vicinity of the Butte and Superior, and northwest of the Alice. The appraisal of the value of mining property has been my business since I left the Geological Survey. During my connection with the General Development Company, I would be asked to visit certain mining properties and see if they were a good purchase for that purpose for the price

asked. The General Development Company is a large corporation with Office at 42 Broadway. Mr. Adolph Lewisohn is President, and Park Channing is consulting engineer; they took up the Colorado Dredging Company and other companies. They operated all over this country. They at one time had a bond on the property now known as the Butte & Duluth, the Montgomery, Macaroni and Altoona. That property is in the eastern part of the Butte District, in the foothills of the east range. In going about to determine the value of mining property, one investigates every particle of evidence bearing on the value of the property, that it is possible to acquire. First naturally, the surface is most carefully examined, and then the underground workings, if any, and if those underground workings are accessible, they are visited, carefully examined geologically, carefully sampled and estimates made as to the tonnage developed,—probable tonnage and what geological evidence, if any, there is in the extension in depth, noting the probable genesis of the ore in order to arrive at some conclusion as to the probability of change or not in the character and value of the ore, and all other features concerning that; if the underground workings are not accessible, and they are known to exist, and it is possible to obtain reports of the company previously operating, due weight is given to that and the maps and the assay sheets, and any other evidence which appears to an engineer to be reliable. The appraisal is based on so many



different elements that it is impossible to specify each particular item.

I am familiar with the property in controversy here, generally known as the Alice property, in Butte. I have known the Alice mine and the surrounding property since 1896. I should say, as to just what particular prominence the Alice property has in the general geology of Butte,—it has the largest and best developed silver ledge or lode of any known in this district, and one of the largest probably in the United States; it is a lode that can be traced for a long distance,—I should say, roughly speaking, a mile, and the heart of the mineralization of that lode appears to be in the center of the Alice group; it is a very great lode, which has produced, as we all know, large sums of money in silver, and a lode which, at the time I visited it, was considered to be a probable source of zinc, but was not considered very favorable for the silver values on account of the inability to treat that ore in the mill; the tract also has, if you will permit me to continue for a moment, a number of intersecting or transverse veins, coming up from the country to the southeast, which can be traced up to the Rainbow lode,—I have not traced them through it, but can be seen as a similar series of veins on the other side, and it also had a number,—it is in the direct line at least, on the extension of a number of very prominent copper producers in the so-called copper area around the developed and producing mines of Butte.



The Rainbow lode enters the property in the claim known as the Valdemere claim and passes through the Valdemere, Magna Charta and Alice claims, continues through the property of W. A. Clark, known as the Moulten claim and in my judgment is continued in the Rising Star claim. In the Alice claim it goes from one end to the other, I think, a distance of 1130 feet,—referring to plaintiffs' exhibit 1, Corry. It goes through the Alice and through the Moulten, and can be traced in my judgment through the Rising Star claim. There are a number of veins discernable in the Alice, and southeast of the Rising Star in the group of veins there with well defined fissures, shown on the geological survey sheets here and I have traced them more or less on the surface. The evidence seems clear that they pass through the Curry, Paymaster and Blue Wing claims. There is a vein clearly discernable on the surface through the Rooney, Saukie East and Saukie West; a strongly defined fissure vein and also in the Boston. As to what work is being done at the present time, on the Rainbow lode, I understand that there is no work being done, save by some lessors on what is known as the Clark Fraction, or the Fraction claim, which, according to my information and belief, is the property of the Anaconda Company; it lies in between the Magna Charta. East of this group, I have traced the Rainbow lode on the surface through the Poser claim, and by surface and underground workings through the Elm Orlu and into the Black

Rock claim. There are extensive workings on the Elm Orlu and Black Rock mine on the Rainbow Lode. The Elm Orlu is a Clark property and the Black Rock belongs to the Butte and Superior. The Butte and Superior property is being worked for zinc ore, the ore is mined containing a very small proportion of copper; the Elm Orlu property is worked both for zinc and copper. The ores in the Rainbow lode containing zinc primarily though I found ore in it in commercial quantity. I have examined the workings of the Elm Orlu. They get copper ore there, chalcopryite, bornite and a little glance, of commercial value, exceeding three per cent and running up to six and seven per cent. As mined it exceeds three per cent; the ore I saw, however, was a distinctly high grade. I should say by inspection it ran from eight to twelve per cent. Three per cent ore is regarded as commercial ore now in the Butte camp. Lower workings on the Poser are 1500 feet deep. I spoke about veins coming from the southeast, they have distinctive names, there is the first one, the most prominent one might be called the Jesse, although the vein known as the Berlin vein, and the vein known as the Emily, are turning in that direction. In other words, we have the Berlin or Snowball vein, the Emily vein, the Jesse vein, the Edith May vein, the Covelite vein, further down here, and a number of other veins, which have been opened up in the Diamond, and Bell, and Gray Rock and Corra

mines, and all turning into the northwesterly direction, bearing copper ores.

Q. Which of them have produced bountifully? A. According to general information and belief, and the statements which are contained in the reports of the North Butte Mining Company, the Jesse vein—MR. EVANS: I object to anything based on statements of the North Butte Company.

THE COURT: I think these general statements and possibly the history of the company, I think they are competent and permissible; what weight should be attached to them might be another thing. MR. EVANS: The North Butte Company's reports are simply hearsay. I will make a definite objection to any matter contained in the reports of the North Butte Mining Company, or any other private corporation not a party to the action, as hearsay and entirely incompetent.

THE COURT: I think those are all items that go to make up value; it might influence a possible purchaser. It is a question, as I say, of what weight should be given to them. The objection is overruled. To which ruling of the court the defendants then and there excepted. Without going into further detail concerning the source of my information, as to the productive character of the veins I have spoken of, the Jesse and Edith May, they have been quite productive, yielded large amounts of valuable ore. So far as my knowledge goes, with reference to workings that are on the Jesse vein, producing commercial ore, the Anaconda Company has been working what

is known as the Modoc workings. Beneath the Adelaide and Mountain Chief property and Old Joe, and they have been traced and worked through the property of the North Butte Company, and I have also seen the Jesse vein in the mine known as the Badger State mine. The Edith May I have not been able to trace underground and my information as to the position of the Edith May on the surface has been derived largely from others, and from investigation of the surface; but as to its underground extent and its course and its proximity to the Alice group, I have been obliged to refer to a publication of Mr. Reno Sales, the geologist of the Anaconda Copper Mining Company, which I hold in my hand; a copy of the map. I had recourse to that publication, informing me estimate concerning the value of the property in question, (the map above referred to was marked plaintiffs' exhibit Weed No. 1, and introduced in evidence.) This map shows what I have taken from the geology of Mr. Sales of the Butte District. The Edith May with this line extending in a general northwesterly direction dislocated by one or two faults and extended within a point of 165 feet of the side line of the Magna Charta lode claim. The Magna Charta was not depicted on the map. That has been put on at my request by Mr. Corry and in my presence, the measurements were made. This map was drawn to a scale and is approximately one inch to 780 feet. It has a north line on it and for purposes of identi-

fication, I have used the location of the shafts,—The Speculator, Modoc, Corra, and other shafts that are placed on the map. The location of the shafts in many of the veins corresponds closely to the location as given on the geological survey sheets. I checked up the distances and found them correct. I believe the location of the Magna Charta and the Magnolia, shown also on plaintiffs' exhibit No. 1, are substantially accurate. Mr. Corry did the work, and I was present during the measurements. I might add that the workings shown on this are stated beneath here to be those on a horizontal section of the Butte District, 4600 feet below these levels, and therefore, this is not an index map, but that the Edith May's vein is shown here going down with a dip marked 90 degrees, and from my own knowledge of the workings as seen in the maps of the Badger State mine, I know that the above is substantially correctly shown here, and is a nearly vertical vein. So far as possible I have studied all the available evidence with a view at arriving at a conclusion satisfactory to myself, concerning the value of this Alice property, and this is one of the lines which I have followed. In regard to the underground workings of the Alice and Moulten properties, in which I have not been underground since 1896, I was obliged to rely upon the map of the workings, which I extracted from the official report of the Alice Mining Company for the year 1884. The map is shown here and which I use merely for my general information as an engi-

neer to show how deep the workings went; or how deep they were kept, as I understand they are deeper now than shown here, to give me the course of the veins encountered, with the reports given by the different Superintendents to the presidents, and reports issued by the presidents, and based my judgment as to the value of the properties so far as that factor went. MR. EVANS: We make the same objection to that,—any statement in the reports of the Alice Company, or Alice data of any kind, or any statement or estimate of value based upon them, for the reason that it is incompetent and hearsay, and not proper evidence in the case, not connected in any way with the defendant. It is simply using the evidence of the plaintiff, the declaration of the plaintiff and its officers in favor—THE COURT: I will admit it under the usual rule; the objection will be overruled, and if the evidence is found not competent, it will be disregarded. To which ruling the defendants then and there excepted. As far as my investigation has told me, the principle ores in the Rainbow lode are silver and zinc ores. The silver ores, as such, being confined to the upper levels through the extent of the lower. By the upper levels I mean the levels extending from the surface down to approximately six or seven hundred feet at the most. As to the likelihood of copper ores being encountered in the Alice property, I would say that the northwesterly fissure shown on this map, prepared by Mr. Sales, are turning in a direction that would inevitably carry them

into the Alice property, and those fissures being well known to be part of the well known northwest, or Blue Wing system, and carry ore in shoots throughout, the veins would be very likely to carry copper ores in that property and that such would be found in the Alice property.

So far as my information goes, zinc ores became first a product of commercial significance in the Butte camp in the year 1910; in the latter half of that year the Butte and Superior Company were successful in treating their ores, and made their first profit, as I understand it. Experiments have been made for many years, hoping to utilize the base ores of the Rainbow lode. I recall that back in 1898, and later in 1906, there were men working here on that problem, and I conversed with various people who were anxious to have an option on that property, or on the ores to make experiments thereon. The success that I spoke of as attending the efforts was that achieved by the Butte-Superior Company. The works they have there constructed at the present time are quite extensive, capable of treating an output of some 500 tons a day. The ore is a concentrating ore, the concentrates are shipped to a zinc smelter at Bartlesville, Oklahoma. I have seen the works constructed by Senator Clark there in Butte. That concentrator is now in operation. Previous to the erection of that concentrator, the Old Butte Reduction Works was utilized for treating Elm Orlu ores; and was successful. Considerable progress has been made



in recent years for the reduction of zinc ores. The invention and application of the so-called flotation process largely by the Mineral Separation Company, and in this district by the old regime under Captain Wolvin of the Butte and Superior, and the much more extensive work by the recent Butte and Superior Company, under Mr. Bruce's management, has quite changed the application,—made a success of what was previously a quasi failure. Senator Clark's experiments made in the old reduction plant, extending over two years, tested every available process for the reduction of those ores; and it was found that the wet concentration process followed by flotation was the best means for treating that ore. Outside of the Butte camp, advancement in the treatment of zinc ores has been made. In Mexico a company for which I am consulting engineer, is treating the complex ore, treating that ore with old zinc,—small amount of chalcopyrite and iron, and that product is treated in the wet mill for the extraction of galena, and the galenas containing copper has chalcopyrite, and to some extent has tatrahedrite,—the lead and zinc are now out and dry, and are run through the Huff electrostatic process, and the clean product is shipped to Bartlesville and the copper and iron are shipped as a clean product to the smelter at Cananea. That process is also used at Midville, Utah, and is generally accepted as one of the means of treating complex zinc ores. There are other processes, I understand, as an engineer in looking into



the subject that electrostatic is only one of the means of extracting it, magnetic machines have also been devised, and also iron and copper can be extracted from the zinc ores. I, in consultation with Mr. Sherwood—MR. EVANS: I object to this, if the court please,—any conversation with Mr. Sherwood, or any statement based upon that. MR. WALSH: All of this goes to the question of value. MR. EVANS: If that is the rule, there is certainly no protection in your rules of evidence. Mr. Sherwood is shown to be a private engineer, and he gives his views to Mr. Weed, and if that can be the basis of value of these things, simply private conversations, views of Mr. Sherwood, I don't know what protection there is in this, and we formally object to any statements of Mr. Sherwood, or any statements of value, based upon any statements, as hearsay, incompetent, not connected with the parties to the Alice in any way, and entirely improper to be received as evidence; or as a basis of evidence in the case. Thereupon, the said objection was by the court overruled, to which ruling of the court defendants excepted. Q: You may proceed. A: You asked me what recent improvements have been made in the treating of complex zinc ores, and I was simply endeavoring to show what an engineer in the course of his professional work would find, what books—the text books are always behind time; the important advances in metallurgy have always been a year or two in advance of the text books, and it is only

by conversation with the men who are doing things that a man can find out what the big things are in advance of the public. I mention Mr. Sherwood because he showed me the result of his tests in the Butte and Superior works, which showed a successful treatment of a complex ore, and work which he informed me would enable him to handle the ores at Cananea cheaper than I was doing it, by the Huff Electrostatic process. Q: You had, I think, concluded that proposition or branch, Mr. Weed. Now, in the prosecution of your professional work, Mr. Weed, have you been required to inform yourself concerning the progress of these metallurgical experiments. In the prosecution of my professional work, I have been required to inform myself, concerning the progress of these metallurgical experiments, and from the investigation that I have given the subject, I believe that the zinc ores of the Alice mine can be successfully worked by existing processes. I believe that with the experimentation that is necessary in the inception of any new mining enterprise, that this ore could be found capable of being treated at a very much less cost than is now possible, so that they could be handled commercially. In considering the character of these ores, and as to whether they could, or could not, be treated successfully, I had access given me, which showed that in the year 1902 a large shipment of this ore, comprising 50800 tons of the zinc ore, selected because it was zinc ore, was shipped to Salt Lake

City, run through the Brunton sampler, the resultant sample forwarded to Bemis Brothers, at Bingham,—the resulting material was treated through this mill, and was then shipped as concentrates, the concentrates being 1.1 into 1; the concentrates were shipped to the American Smelting & Refining Company, at Salt Lake City, and the resulting value was \$10.30 a ton net to the shipper. MR. EVANS: May the record show that we are objecting to all of this statement as hearsay? THE COURT: This is largely hearsay, and I doubt if it has any value. You may have the same objection to all this character of testimony. To which ruling of the court the defendants then and there excepted. I got this information from Mr. Walker, at whose orders the ore was shipped by Mr. Buzzo, the Superintendent; I verified it as far as possible by the shipping returns and the assay receipt, and the smelter returns; in other words, checking each step in the process by the papers submitted. That ore was treated by old fashioned methods in vogue in 1902 and recovery of \$10.30 from the smelter made on the smelter returns. As to the likelihood of the occurrence of copper ore in the Rainbow lode itself, the sample that I spoke of had 1.4 percent of copper, and the old records, including a number of test shipments, made at various times,—seven I had shown me,—showed an average of better than 1.1 percent copper, and irrespective of the information supplied me by Mr. Walker, and by the records of the company, I believe that owing

to the mineralogical associations in the Elm Orlu mine, I believe that copper ore will be found in the Rainbow lode. In that part of the Butte camp copper veins are found to be particularly productive in depths from a thousand feet or more downward, varying in locality and according to the shoots. Some of the ore shoots do not come to the surface or to the oxidized zone. From my study of the ground, I would say that the value of that property in the early part of May, 1910, giving consideration to the values placed on the adjoining and less desirable claims, and to the other factors, which I have mentioned, I would state specifically, three million dollars. MR. EVANS: I wish to object again. Here we have another element of hearsay information—values placed upon adjoining claims—by whom, or in what manner is not disclosed. Which said objection was thereupon overruled by the court, to which ruling of the court the defendants excepted. In view of the conditions then existing, supposing that I owned the property, I should have advised against selling it at all, because what may be termed the unearned increment derived from the adjacent property, mines, enhance the value of property from year to year, and the fact that at that time no development had been carried on to the north, but that it was being rapidly brought up from the south, and also the general conditions,—I should have advised against selling the property for that figure. There has been a very material expansion of the copper producing

area of the Butte District. Originally I should place the center of the copper producing area on Anaconda Hill, including the Parrot ground. The growth and extension was northward and northeasterly in the direction that I have indicated on this geological map, extending up this way, and off to the northeast. The Alice properties lie to the northward of what I spoke of as the original center of the copper producing area; the extension has been in that direction inasmuch as the extension has been up through this direction. It has not been toward the northwest. The more recent developments, which have extended the copper producing area toward the Alice properties, are the workings in what are known as the North Butte properties, and the workings in the Badger State mine. The workings in the Pilot mine, and if you care to go still further north, in the Butte and Bacorn properties. I am familiar with the Badger State shaft. In a general way the Jesse and Badger State veins are being worked through that shaft. It is so situated that those veins could be conveniently worked. I know that a shaft is situated on the Moose claim, and is apparently being worked, but I have not been down in that shaft for many years. As to whether I have noticed any recent working there will say that the hoist is apparently being operated. The Valdmere, Moose and Edith May veins, could be worked from that.

#### Cross Examination.

My services were practically given to the gov-

ernment work until 1906. During that time I had leaves of absence to visit Mexico, British Columbia and Cuba, on practical mine examinations, with particular regard to the value of the mine for purchase. Those vacations averaged about three months in each year; that I was devoting to that. Up until 1906, I did not do any work of that character in the Butte District. My connection with the General Development Company was from 1906 to the latter part of 1909. I was not with the General Development Company at the time the Lewisohn Brothers sold the Jesse claim. I knew of that; Mr. Lewisohn repeatedly brought that up as an instance of ill advised geological information. I believe he blamed Mr. Channing. The General Development Company was controlled almost wholly by Adolph Lewisohn and his sons. The Jesse claim was sold by the Lewisohns about 1905, I believe. I believe, there were large ore bodies and the best veins that the Jesse veins ever showed were displayed in that claim. I do not know the price it was sold for. Mr. Lewisohn simply said that it was grossly inadequate. After my connection with the Lewisohns began they started to extend their holdings in the Butte camp, and looked into a number of properties. They took a bond and lease, and did considerable work on what is known as the Butte and Duluth. My recollection of the price is that it was \$250,000.00, that was along about 1906. At that time there was great speculative activity in the copper mining busi-

ness; copper being very high. At that time copper was selling at twenty-two and twenty-three cents. I have not been underground in the Alice properties since 1906. The development, excepting last summer's, according to my information is just about where it stood at that time. You could see as much or more in it then than you can now. I was down to the 700 foot level, I believe. The water level had risen from the one thousand foot level to there. The Rainbow lode, according to the workings and according to my inspection with Mr. Emmons, was the main development showing the greatest amount of development. The Rainbow lode through the Alice ground was pretty thoroughly developed down to the thousand foot level, as far as I saw it. My maps show there was quite a thorough development on the Rainbow down to the thousand, and the little parallel veins that were found were developed to various depths, say 700 feet. They were following, as they informed me then, the silver streaks, and they did not always develop the full width, or pay any attention to the cross streaks. The presence of zinc was regarded as a distinct detriment at that time. The Rainbow lode is large, 60 feet across in places, and it was impossible to do more than follow certain streaks. They did not attempt to develop the lode. By thorough development, I mean I would crosscut occasionally. They followed the manganese streak ten feet; to one side of the crosscut there might or might not be silver



ore, but they did not attempt to see. The development on the other lodes, outside of the strictly Rainbow lode,—the Blue Wing, the Midnight, and Curry to the south, and the Saukies to the north, showed that they were minor developments as compared with the Rainbow, being much smaller, but for a considerable period of time, I am informed, they supplied quite as much ore as the Rainbow. Some of this work was quite recent on the other claims, but more promising because they had some silver. As to the possibilities of this group as a silver property, above the 1500 foot level, I place practically no value on it at the present time, as a producer of silver ore, which were milling ores, but as a silver producer in connection with the lead and the zinc ore, I consider that it has some value. The former management, under Mr. Walker up to 1905, gave the property an energetic and intelligent working from a silver standpoint, but not from the standpoint of silver as a concentrating ore. I considered that from a free-milling standpoint, they did energetic development.

MR. EVANS: I want to offer in evidence the unchanged government folio, that I had Mr. Corry mark for identification.

THE COURT: Very well.

That map correctly showed the position of the veins through the Alice, and adjoining ground,—the Rainbow lode, as they were delineated on the folio published in 1897-8. From knowledge acquired since, I would say that it does not correctly



show them. The reason that I know it is not correct is because a careful inspection of the surface of the ground by myself at various periods in the last four or five years has shown me that the outcrops as marked and mapped by Mr. Downer in 1896, were not correctly shown, and those outcrops were not changed in the reproduction of this map, because it lay outside of the area of which I was making detailed study. Upon the Alice claims themselves there has been no surface development since 1897, except some leasing shafts, which have brought out conditions not seen before. There is evidence on the ground sufficient to my mind to justify anybody in changing the position of the Rainbow lode, as shown on the folio. One man would connect one way and one another, and the original work was done by Mr. Downer, whose connection with the survey was unquestioned, and it was not until I came to look this over that I found he had made an error. I made an examination on the Rising Star about eight or nine days ago. I was up to the Alice ground for the purpose of making an examination on the afternoon of three days and in the morning of one day. I should say I devoted three and one half hours each day to the study of the Alice ground. I was in the Pilot mine one morning until noon and again in the afternoon from four to seven. One afternoon I went over the surface of the Rising Star, the Alice and the Valdemere. One afternoon I went through the Alice and Moulten, and also in the Rising Star

and Walkerville, and another afternoon I covered ground from the Saukies and down through the Valdemere and Boston. I might add, however, that on previous occasions coming in connection with the Poser, I came through this ground,—I am quite familiar with this ground in here; not as far west as the Rising Star, although I have been over the Rising Star many times. It is a somewhat difficult matter for anyone to go up there on the surface and trace out even the approximate course of these Rainbow lodes on the surface westward from the west line of the Alice, because of the little shafts and cuts and changes. Eastward it is very hard to trace through the Clark Fraction. There is nothing that can be traced definitely through there. The Rainbow lode has been definitely and positively described by Mr. Emmons, and others as a lode with defined walls. The word lode means a cluster of veins. I should include in the Rainbow lode proper, the north vein, which is quite persistent, the middle vein and south vein; the immediate matter being broken, so that I think it constitutes one lode. I did not include those cross veins in the Rainbow itself, although I notice that other authorities have included them. When you go down to the Black Rock, it is a simple matter to tell what operations on the Black Rock vein are within the Rainbow lode.

As to the parallel north veins, I would connect up in the same way as made up on the government map—segments of the veins on the south—I

believe this to be substantially correct through here. I know the apex work and underground work correlate up pretty well to show that the vein went through the Black Rock shaft and the Elm Orlu shaft. As developed in the Moulten lode, there are three Rainbow lode veins, and in the Alice, as I recall it from the reports, there are three and sometimes four or five. The north vein joins with the middle vein at the Alice shaft coming from the west, and over at the east end line of the Alice it is supposed to be one vein, separated by clay selvages, but they constitute one vein. The Rainbow lode veins are on the east and west series and age. They are entirely distinct in geological characteristics from the northwest and southeast fissures like the Jesse, which are more recent save that there strike faults along the Rainbow lodes. I have seen in the Rainbow lode within the Elm Orlu ground, where there are cross-fissures, which would correlate up with the northwest fissure, but not any definite vein. I do not know if it did fault, the Rainbow lode; it cut through but it could not be satisfactorily determined. I could see no effect as to mineralization at that place. I might add that in 1896, the existence of these northwest fault veins was not satisfactorily determined, that is the general importance of that series was not recognized. The Mountain Chief and the Gem were recognized as ore bearing, also the Jesse. I knew during my first visits to Butte of the old Moulten Mill. As a matter of general information, the Moulten has

had about the same history as the Alice. Senator Clark has let that lie there all these years without doing anything with it, so far as I know, but has been active on the Elm Orlu both for zinc and copper. The Elm Orlu being adjacent to the Black Rock and the opening of stopes in that Black Rock, naturally he would do some work on the Elm Orlu because someone else was developing the ground for him. Senator Clark and his companies have done quite a good deal of development in the Elm Orlu. Since the burning down of the works there, I understand that they have put up a new small hoist and that lessors are working there. The Frank Moulten is practically a full claim, and it shows the Alice and has the Rainbow lode which at that point is split up into three branches, and is not as heavily mineralized. It is also split into three branches on the Alice; those branches are diverging toward the Moulten. There is a shaft on the Poser claim about 500 feet deep. My recollection of the depth of the Poser workings is 900, 1300 and 1500. I should not like to say that they show no commercial ores, zinc or copper. I have a sample, but I cannot say that it is not commercial, I did not sample it. The workings on the 1500 were run a few months ago; on the 900 and 1300 I think the work was in progress in 1913. In the Elm Orlu, since the burning down of the Clark Concentrator, they have been getting out 150 tons a day of copper. From what I saw in the Poser, I would say the ore would be zinc

and some more of it was mixed, I could not class it as copper. There is no ore there that I would care to class as copper ore, or operate myself. With reference to the Elm Orlu, I have been informed by Senator Clark's engineers and the foreman, and have seen the ore; that for a considerable period they have shipped from 50 to 150 tons of copper ore a day. I have seen stopes there, counting the sill floor, 5 feet,—35 feet wide, and the fourth floor, I think, was the highest I went. I think 150 tons a day is a pretty good production, and that was done practically every day I was up there. I base my idea of the value of the Alice on the fact that the Rainbow lode, and the Elm Orlu, both carry copper ore and, therefore, as the Elm Orlu lode is not as well mineralized as the Alice and Magna Charta, but is on the same type of fissure, therefore, there is a strong geological presumption that copper will be found. The copper ore I saw in the Elm Orlu is mined from the Rainbow lode; the Rainbow lode has stopes in the Elm Orlu that are six and eight sets wide. But not of copper ore, I saw them mining, I saw one place where they took out a carload from the Rainbow lode, but the stopes I spoke of were on a vein running north to the southeast; and on the southeast side of the Rainbow lode, about the center of the Elm Orlu claim. There is such a vein on the 1500; I believe there is some also on the 1300 but I am not sure. I understand the shipments of the Butte and Superior carry a one-fourth of one percent of copper. I do not know that any cop-

per is found in the upper levels of the Elm Orlu. I am under the belief that in the lead-silver ores of the Alice, they always find copper, and that they had that to contend with in their milling operations; and that was regarded as a detriment at that time. If the old statements concerning the Magna Charta and Alice are to be believed, the copper went from 1.1 to 2 per cent and while in those days, back in 1894 and 5 copper was a detriment, today that copper could be recovered by the electrostatic process. We are doing that with one-half per cent copper in Cananea, and we are making money out of it. The assays that I have seen are in the possession of Mr. Walker, I have seen them since I have been in Butte, I think there are seven. I saw a list of shipments in which the assays of each shipment were given. Two of these shipments were made to the Zinc company and the ore tested for copper. The first time I saw the list of shipments was two or three days ago. I refreshed my memory by looking at it last night. As to what portions of the claim these ores came from, two of them related to the cross-cut in the 500 on the Alice. I do not know where the rest came from. I think that was 1902 or 3. From the shipments shown me, I gathered that would be a fair average of the zinc ores. I have been going on the assumption that the zinc ores would carry 1.1 say, per cent of copper, which would be over twenty pounds to the ton. That would be an important factor in my conclusion as to the value of the ores in the Alice mine.

Twenty pounds of copper in that grade of ore is an item, if you can recover it. I place importance on it, but not great importance. Even if you eliminated the copper, keeping it down to a quarter of one per cent, that would not make very much difference in my idea of the value of the Alice properties; I think it it would still be worth three millions of dollars; but the copper is in the zinc ore of the Rainbow lode, and zinc ore is above the 700. The north vein carries zinc, but there is zinc all over there. The north vein is the most refractory zinc ore, and there is a great deal of iron there. My information is that they opened it up expecting to find silver. They found bundles of zinc ore up to the 500 foot level. If I were representing a buyer of the Alice group and were going to operate it tomorrow, the first thing, I should at once endeavor to develop the northwest vein going through that ground, and at the same time I would first give my attention to deep development in order to pick up an extension of the Edith May and any northwest fissures; or any fissures coming up through there, shown in Mr. Sales' map. The first development would be towards developing the veins for a copper proposition, and at the same time I would be putting some trained metallurgists to work to design a mill for the treatment of the zinc ores; I should have them experiment with these ores to see if they could better those known processes. I am satisfied that the zinc ores that come from the Alice mine, and which have been represented to



me as being an average sample of the ore in that mine can be treated at the present time by ordinary wet concentration, and oil flotation. The items in that valuation that I could treat at the present time,—one carload lot went 1.08 ounces in gold, 8.9 silver, 7.5 per cent lead, 17 per cent zinc, 7.6 per cent iron, 47.9 silica, 1.2 copper; the second carload shipped to the Empire Zinc Company is purported to have carried 1.60 gold, 9.7 ounces silver, 7.5 per cent lead, 18 per cent zinc, 7.6 per cent iron, 48 per cent silica and 1.3 copper. The shipment of 50,800 pounds shipped to Salt Lake is given me as going \$2.80 in gold, 9.1 per cent silver, 9 per cent lead, 18 per cent zinc, 12.4 per cent iron and 33 per cent silica and 1.4 per cent copper. Ore which runs 10.6 per cent iron, manganese .98, copper trace, silver 3.25 ounces, gold sixty cents, .03; lead 7.05 per cent and 14 per cent zinc, and the insoluble  $\text{SiO}_2$  47.2, is decidedly lower, than the samples I have mentioned here. It is much lower, the silver for instance is only  $3\frac{1}{4}$  ounces as compared with 9 ounces; the lead is only 7 per cent as against 9 in one case and  $7\frac{1}{2}$ . The zinc is 14 as compared with 18, the iron is rather high. The sample I spoke of, concentrated at the Bemis Mill went 7.4. The manganese might be troublesome in some treatments. I am not a mill man, nor do I claim to be an expert but basing my answer only on my experience with the Mexican ore, I would say that that ore might be treated by wet concentration, flotation and running the middlings over the magnetic ma-



chine. I do not care to be considered an expert on that. My impression is that a man dealing with complex ore and taking the muck out of it, it could be treated. I would be willing to spend some money treating it, putting the ore through the mill and shipping it. That is backing my belief; I believe it can be treated. All I know about Mr. Bruce's operations on the Butte and Superior is that they are very extensive, and reputed to be very profitable. I am not going on the assumption that there is a decided similarity between the Butte and Superior ores and what I might find in the Alice, because as I have seen the Butte and Superior ores, they are remarkably free from pyrite. In the Black Rock mine, I found there was a great deal of the ore there that was extremely fine, and that was one of the troubles the early management had in the treatment of the ores, because much of it had to be ground almost to a slime to get the zinc out.

I published Volume 11 of the copper hand book, and I am familiar in a general way with my article on the Butte and Superior operations. The following appears on page 179 of that book: "The ore is sphalerite with a quartz gangue, the zinc sulphide being mostly dark brown blende, mixed with some gray blende; it is friable, breaking into crystalline fragments, separating easily and amenable to concentration. The ore actually blocked out is said to have an average value of 21.7% zinc, with 7.9 ounces silver per ton." That information was derived from the official rec-

ords and statements of the company and applies to the ore that has been run through the mill. When I first visited there, they were picking out the best ore and leaving the crystalline material for later treatment. The ore that the Butte and Superior is milling and making a success upon, is this coarse crystalline ore, but the finer material they are also mining to make up the values. It is a desirable ore. Taking the analyses that I got from Mr. Walker, my assumption is that there would be a recovery of a portion of the silver in the lead concentrate; and a portion, as in this case, would be lost in the zinc. The concentrate which was acutally made from this ore carried 12.2 ounces in silver. It had been a concentration of three into one, and the actual silver recovered was 43 and a fraction percent of the silver contents of the ore. I am not confident that the silver values lie entirely in the zinc in the Alice ores. My recollection of tests made on the Elm Orlu and Black Rock ores was that all of that silver ore lay with the iron, that if a magnetic separation was made, some of the silver values would be recovered with the iron in the copper. It would make quite a difference where the silver lay. The zinc concentrates formerly made by Senator Clark were shipped to Bartlesville and then shipped back to Pueblo for silver recovery. In reducing zinc from the ore at Pueblo, I presume they lost part of the silver. I had quite a discussion as to how much was lost, and take the position that they did lose quite a bit, and to my

astonishment they showed that just a little was lost.

If I were reporting on the Alice property as to what amount a purchaser would be justified in paying for it, the first thing I would consider would be the ore in sight, if I were able to see it. As a rule the big operating companies in every case require that some ore be blocked out. In purchasing the Alice, I would not compare the position of the Anaconda Company with the position of an independent purchaser, because the information of the Anaconda Company is in advance of any other purchaser; because any other outside mine would not have access to the workings of the Anaconda mines, unless they gave it, to determine whether the northwest-southeast veins came up to the Alice and assembled. The Anaconda Company has a large and capable geological department, and I believe they are in better shape to furnish information around the Alice than any other one man or group of men. I have never had the least difficulty as a government representative, or in any other capacity in going through the workings of the Anaconda Company, they have been very courteous indeed. As to whether I have had any difficulty in going anywhere, wherever I wanted to see anything,—the last time I went down the Badger shaft, I was not allowed to see the Edith May workings south of the Jesse workings; that was last year; and my purpose was to inspect the properties in connection with the Elm Orlu, I asked to see the Edith

May, but I was informed that I should confine my examination to the north. The map furnished me was cut off at that point. Of course, as a geologist I had interest in the whole of it.

The Badger State shaft being some 2200 feet deep, the Anaconda Company is in better shape by several hundred feet than any other purchaser, who would have to make developments. There are three elements entering into the valuation of this property: First, the general reputed value of the claims surrounding these, and which have been offered to me, I will say, at from one hundred to two hundred thousand dollars a claim; the second one would be the development of the property and its known ore, if any; and the third would be its general geological conditions, and the geological probability of finding ore of a different character, or more of this character, in its extension downward, all of the factors which a mining engineering would be obliged to take into consideration. The ore in sight in the property would under my second factor, and the only developed ores that I know of in the property are the zinc ores, carrying some copper, I mention that as a minor factor. The shipment I mentioned, showed a profit of \$10.13 upon each ton of concentrates; or all that was realized from three tons of ore. I understand the freight charges were included, excepting freight from here to Salt Lake. If you had any freight, there is no profit, if you ship it from here down there; but if the mill were situated here and that ore were treated

here, it would be a different proposition. As to what I consider a fair mining charge—I had approximately \$3.00 per ton of ore left, the zinc in that being disregarded; those concentrates were paid for on the basis of gold, silver and lead. It is impossible to say just what value I attribute to the ores in sight, roughly speaking the ore in sight and the presumable ore in depth would be approximately one-third of the value of that property,—a million dollars, more or less, according to how the estimate was made. I am considering the value of the ore on these three shipments that were given me as indicative. I was not present when they were taken. I am going on the assumption that they are a fair sample of some ore in the Alice mine; I do not know how much. The ore as I saw it underground was a good zinc ore. If it were of the grade that was read to me, I would consider it of value because if the processes are so perfected, the ore might be treated by this electrostatic or oil flotation, and it would be of value. I do not know just how much, but it would be considerable. Without a thorough sampling and measurement of the workings, I could not have any definite idea of the precise tonnage of the zinc ores in the Alice. I saw 30 feet pointed out to me as the zinc ores, and walked in the levels shown on the map. I could not say, it was half a million or five million. My only source of information as to the values I would have to work with there, would be derived from the information

which was casually given me by Mr. Buzzo, that some of this ore would go 18 per cent zinc, and the remainder 40 per cent. I haven't any data on that simply the supposed average value of the ore shipped, as given me by Mr. Walker. That ore is supposed to be as represented,—zinc ore, but whether it was I do not know. I am only taking in a general way my idea as to the zinc ores, as effecting the value of the mine. In other words, I rely upon my own inspection made years ago, that it looked like good zinc ore, and upon the corroborated testimony given in the early reports of the company and upon these facts given me by Mr. Walker and different people I have talked to who have been underground. I cannot put my hand on anything specific in these reports showing the value of the zinc ores, except numerous references are made to zinc ore, and my recollection is that in one or two instances assays were given. I do not remember the names of the different people to whom I talked, but they were persons who were connected with the zinc processes and represented the zinc companies. Running back anywhere from 1898 up to within a year or two ago, I haven't seen any recently. I know nothing personally about the mine below the 700 foot level. From the best of my knowledge and belief, I should simply assign roughly one-third of the three million dollars valuation that I put on the mine, on the zinc ores in sight there, because my firm belief is there is considerable over a million tons of ore there. I spoke

roughly of a profit of a dollar a ton. The same ore gave \$13.00 on concentrates made in Bingham Canyon. As to the zinc processes now that I would subject these ores to as compared with the processes of four years ago, I think for instance that the froth flotation process was practically a novelty four years ago, and is today an accepted process. Practically the same thing is true of the static and magnetic process as far as I know. I have not looked into their history. My recollection is that in investigating the Newfoundland zinc properties, they made a contract with some Norwegian firm to handle at a profit zinc ores, almost identical with these ores. The Huff machine, however, was perfected and on the market to the best of my recollection more than four years ago. That machine has been running down in Cananea something like three years on those ores. One kind of ore can be treated in this machine and another not; our Cananea ore is not exactly like these but it is a complex ore. The Butte and Superior started their attempts to work those ores back in 1907. They were trying the wet concentration and experimenting over there through those years and started here in about 1910 with the mill at the present site, built after my examination. They did a tremendous lot of experimentation, but they were continuing the same work as at Basin. They had a froth flotation at Basin. Mr. Hyde was very successful. I was told that they were eminently successful in their operations before the present regime came in. In



1912 their mill was treating about 500 tons a day, I think; I suppose it treats a thousand now. Owing to this extremely fine ore, the Butte and Superior were experimenting from about 1907 until 1910, '11 and '12, before they got to a profitable point. I haven't any information that there are any profitable copper ore bodies in the Alice at present,—not any more than the zinc. I gave my assays on the zinc, although the reports all mentioned copper, and the assays showed copper. I am perfectly willing to accept 1.4 percent as a by-product. As to the purely copper ores I have no definite tonnage and I cannot give them; although I know generally copper ore is found there in your properties, I cannot say from my own personal knowledge. I think I said in my direct that I base my knowledge on the fact that we had those copper veins going up through that section of the country, and therefore there is a geological likelihood that they will have copper. I know of none that has been developed so far in the Alice ground. I would look for copper ores as well in the Rainbow as in the northwest-southeast veins. Finding copper ores of value in the Rainbow lode is a geological probability, because the Rainbow over in this section does have some copper in it, which so far as we can see comes in the lower level and may be greater still lower. The most northerly northwest-southeast vein, which might bear copper in the Alice ground is shown on Mr. Sales' map, which I accept as very nearly correct, and it is the Jesse shown here, which, if projected



straight, would go through the Boston and the Poser. Mr. Sales' map shows that Jesse vein breaking up into several branches going west, although he has the strong vein itself, with the exception of slight faults, continuing directly on in its course in a westerly direction, these being branches of veins coming in. The branch north of it would cross through the Poser. I have seen the Elm Orlu working going through those veins but no copper ore in that section. I would not expect to find copper ore necessarily within a very short crosscut where a vein is cut through for five, six or seven feet in length,—you might strike a barren place. Where it is cut it simply shows there is a northwest fracture coming through there. It simply shows there is not copper ore in it in that point. It does not discourage me because you have got to have barren places in your ore shoots. In all these northwest veins the ore makes in shoots and the barren places occur on strike and dip both vertically and horizontally. My last recollection as to how far west the Jesse vein contains ore is that in the Badger State they have some ore in the levels, I saw ore in the 1800. As to whether I saw ore there in commercial quantity my recollection is not positive; it is developed in the sill floor, I did not go from stope to stope. I cannot say of my own personal knowledge of having seen ore, or any definite evidence of ore in the Jesse vein of commercial value and quantity west of the west plane of the Gem claim; save as I said that I saw this good looking

vein with ore in it on the 1800. If you will allow me to assume that the Jesse vein continues through the Alice, I should say that the bearing here was through the Badger State and other Anaconda ground; that there was just as good a chance of finding it over here as there was originally, the fact that it is barren through the Badger State does not prove that the continuation of that vein will not be here. Going west there for the length of 2000 feet or so, if the vein were shown to be barren, from my standpoint it might be encouraging. I have been through the Covellite vein and it was barren. It would tend to show that the probabilities of your having ore through there some place else were good. It is discouraging to the man who owns the 2000 feet of the Jesse vein that is barren. The insistence which the geologists, Mr. Winchell and others have had in the northwest vein, was to insist that they should be explored along the strike and it took a good deal of courage to make the people develop along the strike because they would give it up. As long as the fracture contains continuity and the characteristics of the fracture were the same, with evidence of mineralizing waters of any kind passing through there, I would feel well warranted in going on. The Jesse vein to the westerly preserves its strength and general characteristics, if it is correctly drawn by Mr. Sales. The Jesse vein is drawn just as broad here as it is down there, and in addition to that he has drawn places where he has put ore shoots and changed

the width, and he has made a very careful map with all the details it is possible to put on a map. Outside of this map, I know there is a vein going through approximately that line. I cannot say offhand from looking at this map whether it is correctly drawn or not. There is a vein traceable up to that point, but up here I cannot trace it on account of the old workings. If it is splitting up, as to whether that shows that it is retaining its strength, it might and it might not; this section might be another vein entirely. I am not familiar with that section. As you go up towards the Rainbow lode, the character of the Jesse vein changes. It is true that the Jesse vein and the Edith May vein, as they go to the northwest there, their mineralization is changing and becoming more like the silver mineralization,—the contents. There is an apparent increase in zinc, but I am not familiar enough with the workings in the central section to say there is a change. I am not familiar with the North Butte workings on the Jesse. Speaking from the information obtained from the reports of the company, they had there good slopes, roughly speaking from the 900 to the 2200. I think I saw recently in the Boston News Bureau, that they struck ore again underneath that barren zone, I do not know. Assuming that below the 2200, the North Butte has found nothing of value in the Jesse, and as to whether that shows the uncertainty of that vein,—the ore shoots vary both vertically and horizontally; that ore shoot may come in here and work out on the 2200, and an-

other ore shoot come in on the 1500 and work down. Mr. Sales' paper gives an illustration of that in the High Ore. If it be a fact that in the Jesse vein you find nothing below your 2200 of value, it would not be encouraging to go down with your nice slopes to that point. My understanding is that that vein is rich to the 2200 but that is not from personal examination. The next northwest-southeast vein is the one marked here shown on the claim map of the district, as the Edith May. If the Edith May vein showed barrenness on the dip going down, when you got down to the same depth of the 2200, I would think the same of it, but the North Butte Company's report says the Edith May's vein is coming back and making good. I had some old Alice reports and I have also seen the volume which is on the table here, showing reports from 1884 to 1894, and also later reports which are on the table up to 1898, personally I know very little about the Edith May vein. I have traced what appears to be the Edith May vein on the surface nearly to the Moose shaft. There is a good strong outcrop, which can be traced at intervals and which a geologist would be warranted in connecting up. I saw that this last trip to Butte. I put in pretty long hours on that trip; there was no other alternative. If the underground developments west of the plane of the Badger State shaft have not shown anything on the Edith May, as developed, it would indicate to me that the mineralization might have jumped to a parallel fissure, or fracture some distance from

the main one. It is quite an accepted fact in mining and geology that mineralization does jump from one to another. It has been the experience that in deep levels it does jump. Supposing in the Edith May or Jesse I found a barren ore shoot, and found nothing in it, but zinc and silver, if I should find silver in the mines, I should say that you would have to go deeper to find copper, and as you go further away from the district you have to go further down to get copper. In the Mountain Chief vein, they found mineralization at the surface. I do not believe that is the Jesse vein; in other words, I think the chalcopryrite vein found in the Mountain Chief is different from the Jesse. The two veins come together. There is a big strong vein in the Mountain Chief, which keeps on down below the alleged change of dip over into the other ground; and that strong vein carries its typical chalcopryrite below the point where your geological department drew the change of the Jesse. In the Ballaklava Company vs. The Anaconda Company case, I thought we had a pretty strong claim there. I did not express to the Ballaklava people that I was practically hopeless. I expressed myself that a compromise was better than a long protracted lawsuit. Taking the position Mr. Corry gave to the Badger State shaft, if you will draw a crosscut at right angles to the Edith May vein and from that crosscut you run westerly to the Alice ground, the distance as nearly as I can determine is 1350 feet.

Q. I am talking about from the shaft; I had

already assumed there was nothing shown on the Edith May vein of value west of the section of the Badger State shaft?

A. There is a cluster of veins in here, one of which is not named on here, and referring to the geological survey map, there are a number of veins going up in that direction, and on this map you have the Adirondack and a vein which is not named on this map, and the Skyrme vein, and what is the South Bell vein, which is a branch of the Covellite, which have a number of northwest fractures going up to that ground, which are mineralized in this section, and presumably will be in that section.

As to which of those veins is ore bearing, the vein going into the Corra shaft is ore bearing, and so is the Covellite vein. The Covellite at certain levels had ore up to the Corra shaft, and in this ground and in certain levels it had ore west of the shaft. I do not know any of those veins west of a line approximately through the southeast corner of the Annie and Ida. In those veins from the Chief Joseph there down to the south, it is shown in the workings, which I was familiar with in 1905, and '06, which I left the survey, that they stopped when they got out of the ore, the vein of the workings was barren, in all of them to the west, because they became discouraged when the ore played out. If you told me there was considerable development to the west, and that that shows failure of ore, it would discourage me as to ore being in the Alice ground as to this extent, it

would be accumulative evidence that those sections had been developed and did not carry ore as far as you went. It would not discourage me because this Alice ground up here is peculiar ground; the Alice, Magna Charta and Frank Moulten comprise a piece of ground which itself is the center of mineralization and this may have sprayed off into the other section. There is also a possibility that an uprising solution may have left the main section. I know of no place where it has. The only place I know where one of these has cut the Rainbow lode, was a place where I know the Rainbow lode, and nothing was shown. If I found that condition from the Jesse and Edith May going west, and then a failure of mineralization, I would push it through a long section to the west. The past has shown that the timidity of the operators has caused some of the other operators to come in, like the North Butte. Such a condition would not prevent me doing the work. To me such a condition would be neither discouraging nor encouraging. Some of the veins I referred to,—if you will permit me to refer to this map,—I could see that some of them would hit the Lexington ground. I am not familiar with the Lexington ground; I have not even examined the surface carefully in recent years. I have not attempted to give a specific value to the possibility of finding copper ore in some of those Alice veins, that I have been talking about, but I consider the crossing, or at least the possible crossing, of the northwest veins to the Alice ground is an



element which adds very much to the value of the property. You cannot put that in dollars and cents, it is one of the speculative things that a man might regard as valuable. The general character of mineralization and the geological features shown there are such as to give it a great value to the mind of the geologist. I would consider that the Badger State, being on a direct continuation of the Jesse, on the North Butte workings, it was worth development and that it had a specific speculative value. The stretch of the Jesse vein through the Kentucky and Badger State would be as much on strike as you would have in the whole Alice ground, and more if you carried it through the Saukie. My other element of value was from the situation of the Alice ground, without regard to definite knowledge of mineral possibilities. In estimating the value of a group of claims, if there was no development on them I would have to go on the value of the other claims. The Daniel Quilp, which sold for \$250,000.00 does not begin to show the development of these. I understand the option was given for \$250,000.00, and \$50,000.00 paid. I examined the Daniel Quilp, and in examining it I tried to find the value of its surroundings. I was offered ground there somewhere at the rate of \$150,000.00 a claim on an eighteen months' option. I would not give that for market value, you can always get them for less for cash. Once in a while you run across an obstinate miner. I think they paid \$50,000.00 on the Daniel Quilp option and then relinquished it;



some have paid as high as \$40,000.00 and then abandoned them. A mining engineer must take those options at what they are worth, basing his opinion on what other people are paying for claims which are not as well located. The Daniel Quilp has had some good silver ore, and taking the surface it is better developed than the Alice. The Jersey Blue is a claim which I would not like to set any value on, because it is in a case in controversy now between the Butte and Superior and Senator Clark. I should say the Jersey Blue has a strategic value far in excess of its possibilities for commercial ore. Not having made a detailed examination as to the valuation of the Jersey Blue, I cannot say except that in a general way the surface indications of the Jersey Blue are like the Boston, the Boston had a producing mine and the Jersey Blue did not. I do not know what was paid for the Jersey Blue. I know where the Reins' property is, east of the Leonard, just down across the car tracks. My recollection in going down the Reins' shaft was that they had a porphyry dyke which they called the vein. If there was no fault it would go from the Leonard ground easterly right through the Reins ground. The Reins ground goes to within three to five hundred feet of the big Leonard shaft. I did not know that the sale of the Reins ground was made for \$56,000.00, but I do know that parties back east were ready to put up \$300,000.00 if they were able to get a clear title about two years ago. As far as location is concerned the Reins property is situated very

favorably. I know the Lexington group in a general way. If I were told that the Lexington property was sold for \$250,000.00, I would say with reference to its bearing on my idea of the Alice ground, so far as I personally know,—the conditions around the Lexington property are far less favorable on the surface and underground, far less favorable than the Alice. They have never developed any such zinc bodies as are said to be in the Alice. As to the speculative nature of my elements of value, when it comes to pinning them down to actual dollars and cents, I cannot say that this element has so much, and that element so much; if I would fix the whole at so much, upon anything definite in dollars and cents,—it effects the values of the claims basing it roughly at say one hundred or two hundred thousand dollars a claim, that would give me a rough estimate; adding the value of the shaft if it were in good condition would be another element, and the large bodies of zinc ores another; so we have the various elements without placing any specific value on any one. As I recall it the Alice has about twenty-two claims, and some of those fractions have a strategic value which gives them value far in excess of the mere acreage. You have less than three full claims on the Rainbow lode, and the others are of less importance; for instance, I understand the Little Maggie which was a good vein and profitable to the 700, but any valuation is always arbitrary. In rounding out your claims you may run across a refractory owner and would

have to pay him more. It is geologically probable and geologically possible that you will find copper veins in these northwest and southeast veins in the Alice. I cannot take the Rainbow lode and say it is going down to the 3000 foot level, but I believe it will. As regards my placing the value at three million instead of five, an engineer and geologist must form in his mind some definite value as to a property. I am sent out by the General Development Company to report on properties in exactly the same way, and I am asked to see whether it is a good or bad purchase at a million dollars; and in doing that in this way, I have reached the conclusion that it is worth three million. You could say that the five million was equally open to contradiction, personally I figure it at three. I would not admit that your investment would bring back nothing, because any mine that has a large mine above the water level and below, because the records speak of it,—you cannot assume that it is not worth a million dollars because the lowest estimate that you can give it would be a million dollars; that means a five million dollar investment to get it out. I am not willing to admit that you would not get more than that return back; I would say that it is a very good gamble. In submitting your report, if you have a developed mine, you figure the net values are so much and in addition you give the speculative value. I have just tried to show you that I consider the ore in the mine at the present time as a net value,—how much I cannot say specifically,

but my belief is it is in excess of one dollar a ton. My belief at the present time is that that ore could be worked without any new process, simply modifying the existing processes. You will need not less than half a million dollars for mining development; in that I am allowing for the deepening of the shaft, and for the crosscutting and for some working capital, and for some experimentation work. You have a crosscut shown on the Alice map, which goes around and comes in under the Magna Charta and upraises from the one thousand level, and it would be possible with that work, if unwatered, to extend the Magna Charta deeper. I have heard that the shaft of the Alice was still open. If I assume that the shaft is actually closed, and you cannot get below the 300, there would be an expense to reopen it. If that shaft has remained open for twenty years, and only recently caved in, I would say it was a good shaft. I do not know how much attention it has had but from the reports of the Alice Company, it has not had much prior to 1898, at least.

Re-Direct Examination.

It was the North Battle Mining Company that bought the Jesse claim from the Lewisohns. The mining engineer for Mr. Lewisohn, if it was Mr. Channing, as I understand it was, is not a geologist and had no geological data to go by, and the past history of the shaft sunk on the property had not been very satisfactory, and apparently he underestimated the actual value of the property. It has as a matter of fact become an enormous pro-

ducer. It is current talk that the Badger State was turned down by the Anaconda geologists and engineers, but I cannot verify. The Anaconda Company had an option on the entire North Butte property; the Speculator mine and the adjacent property were put up to quite a number of people who did not seem to want it, did not seem to have any faith in the ground there, including, I suppose, the Anaconda Company. The result of actual operations in the Speculator and other North Butte property, and the Badger State has completely reversed things concerning the general value of those veins, formerly they were considered very poor, now they are considered very rich. There have been economies in general mining operations in recent years in the Butte camp, consisting of mechanical improvements and in the betterment of costs all along the line, because of the introduction of electric power; the change from steam to air, and the change in the character of drills; the introduction of the small hammer drills, and quite a number of other changes, which have bettered the cost very materially; the costs to the big companies have gone down materially, and even the lessor companies have felt the lessening. In the early operation of the Alice for silver ores, the zinc and copper contents were worse than of no value, they were a detriment so that they prevented the milling of the zinciferous ores. Copper was also a detriment to the ores milled in the Alice mills in the old processes; because the reduction was made more difficult by

the presence of these ores, and they avoided sending these ores to the mill, if possible, and they were not mined. Ores containing zinc and copper have been left in the workings, for any good miner working the mine similar to the Alice, would leave them under ground rather than bring them up and increase the cost of mining. I myself have seen them there, when I went through the property years and years ago. I believe that those ores can be worked and at a profit today. I spoke of encountering one of those northwest-southeast veins reaching the Rainbow lode in the Elm Orlu. That is a vein which has not been demonstrated to be productive by any workings under it, it could not be correlated, at least I could not; nor have I found anyone who could, with any productive vein lying to the southeast. It is the only instance where I know of an intersection. The Power shaft is five or six hundred feet deep, but the Elm Orlu shaft, which is five hundred feet away, is deeper and there is a drift out from that ground. I have been through the Poser on the 1500, they have a crosscut—the big vein—but it is not drifted on,—only one streak has been. They called it the Poser level, but it is from the Elm Orlu shaft. This crosscut goes to the extreme west end line of the Poser or very nearly. My recollection is that copper was first encountered in the Elm Orlu in the 900, but other ore bodies are on the 1300, we will say, and I think the 1500. There is silver in considerable quantity in the Elm Orlu. In the zinciferous ores, it is somewhat

unequally distributed. On the deeper levels there is some high grade silver, but not as high as in the nine and eight. I am specifically leaving out the oxide ores. As far as I can find out zinc was only reached in the Alice at a considerable depth, and below the oxidized portion. Zinc ore oxidizes readily. In the Cananea mine, which I spoke of, there is a complex lead-zinc-copper ore, it is known as the complex ore. The copper and iron product from the Huff electrostatic machines is sent to the Cananea smelter in Mexico. The Inspiration property is about two hundred miles distant in Arizona. The International Smelting and Refining Company is building a smelter there, and at present there is a smelter at Globe, which is nearby. My understanding is that there was zinc found in the Speculator. I have seen zinc in almost every mine in the camp. I have seen it in commercial quantities in the Syndicate group, and I have seen it in the workings of pretty nearly every big mine in the camp, including the High Ore mine and the Anaconda. In the Ballaklava suit the contention was that a vein apexing through the Mountain Chief claim had passed downward to a depth of about 600 feet, with a nearly vertical dip, the dip being slightly north in the beginning and afterwards turning to the south. That that vein afterwards flattened and passed with a general southwesterly dip; and again at a distance of 200 feet became nearly vertical passing downward; and the Ballaklava people contended that the Mountain Chief vein went on down—briefly it



was contended on the behalf of the Anaconda Company that apex was in the Mountain Chief, and by the Ballaklava that it was in the Ballaklava claim; the Anaconda Company contending that it was a continuation of the Jesse outcrop and that the Ballaklava think it is a distinct and separate claim. In the fault veins referred to by Mr. Evans, it is necessary to sink to a depth of several hundred feet at least to find copper. This map accompanying the article of Mr. Sales, I should judge from the legends on it, gives the veins only so far as they were developed.

#### Re-Cross Examination.

The Sales map is a horizontal map of the plane 4600 feet above sea-level or 1500 feet below surface, and it is not purported to show the position of the apexes of these veins. Speaking of the Elm Orlu workings you have a drift on the Poser and the vein goes partially through the Poser. There is a crosscut north to the vein there, and then you practically go through the Poser claim. It shows a vein about sixty feet wide of manganese and quartz, with considerable zinc in it, in one place zinc running eight per cent, but much poorer than the Elm Orlu. The seven or eight hundred foot level of the Elm Orlu shows relative poor ore in the vein going west. I spoke of zinc in the Syndicate mines; I mean the Chambers and Green Mountain; I will say in the Pauline particularly, also in the Wake Up Jim. There are zinc veins there three or four feet thick, distinct from the copper veins. My recollection of the so-



called Big Syndicate ledge is that it is zincy as it goes in the Pauline and Moscow; and so far as those upper levels are concerned it is about through as a copper vein. The Pauline was one 1200 feet, when I was there. There it was faulted clay and aplite.

I told on my re-examination that the general impression was that you would have to go deeper on those northwest veins for copper. My recollection of the Skyrme vein in the High Ore No. 2 is that they found ore in the upper levels there, I mean on the 900. Below the 1200 they found the good ores, but nothing was found above that level. In regard to operators being obliged to go 1500 feet before they find copper ore of commercial quantity, I think that would apply to the workings of the Pilot-Butte, where they had to go to the 2200 foot, before they got it in the middle vein; in the Pilot-Butte shaft they have gone down on a northwest fault vein and have found no commercial ore until they got to the 2200. It is true there is no development there to tell that that is the top of it, but the vein has been exposed on every level above that; the levels being 200 feet apart.

(Witness Excused.)

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[Testimony of **Arthur V. Corry**, for Complainants  
(Recalled) ]

**ARTHUR V. CORRY**, a witness heretofore called and sworn on behalf of the complainants, re-called for further

Cross Examination.

I was asked yesterday and made an explanation of how I came to sell the Horse Canyon claim for \$7500.00. As regards the first price I fixed on it when Mr. Mattison first spoke to me, as I remember there was no discussion on my part of any price, until it was put up to me, and I was confronted with the state of affairs, that I yesterday outlined; and in the light of that I tried of course to get a little larger price than what he had intimated and it is very likely that I stated at that time, with the full knowledge of the situation confronting me, at the rate of \$30,000.00 for that. As I said, my discussion of that wholly occurred with the absolute knowledge of the conditions confronting me, and was not based upon a true valuation of it, as I recalled yesterday, but it was based upon what I possibly might get, or he might be persuaded into paying me, but I fully knew that no matter what price was given, it would rest solely with him whether or not he would change one iota a figure that he had fixed in his mind; and was not based upon an estimate by me as to the value of that property; but it was absolutely impossible under those conditions being associated with a partner, not holding the entire interest, for me to say as to what that property would bring. My partner at the time of my negotiations with Mr. Mattison was Sister Irene McGrath, who owned the other half. Mr. Mattison purchased the outstanding interest through me, I negotiated with Sister

Angela; I told Sister Angela, that there was an opportunity to sell the property; that the offer made was far less than what it was worth; that, however, I was going to sell, and that if she wished upon consulting her advisers, whom at that time she named, and upon whom solely I cautioned her to rely, and not upon any advice upon my part, but merely upon information of her own; she thereupon consulted her adviser and informed me that she would likewise sell, being so advised by her attorney and adviser. I absolutely did not give her the impression that I thought that was a fair price; but in three separate conversations I told her that I knew and felt satisfied and had no doubt whatever that the property was worth far more than that; and that if she could wait I absolutely took the position and placed the responsibility wholly and entirely upon her, to the best of my knowledge, of giving her all possible information as to my knowledge and worth of that property at that time, which was to the effect that it was worth at least, I remember distinctly telling her at that time, under those conditions that \$30,000.00 would be a bargain cash price for that. I had not sold at the time of these conversations because I told her I was going to sell before that. Mattison told me he would pay me a commission of \$500.00 if I would get that interest at the same price.

(Witness excused.)

[Testimony of J. R. Walker, for Complainants.]

J. R. WALKER, a witness called in behalf of the complainants, being first duly sworn, testified in substance as follows:

My name is J. R. Walker; I live in Salt Lake City; I am one of the complainants in this action; I hold 2110 shares of stock in the Alice Company. I have known the Alice property since 1876, when my father bought it. My father was in the mining, banking, mercantile business,—real estate business, being a member of the old firm of Walker Brothers; a firm composed of my father and his three brothers. I have seen the map,—plaintiffs' Exhibit 1, Corry, and that properly depicts the property of the Alice Company, that being the only property I am familiar with. The ownership of the Alice group is as shown on the Alice map. If I remember correctly, the Company owns a half interest in the Saukie East and Saukie West. In the early days, I used to visit the Alice with father, when he came up from Salt Lake, beginning, I think, as early as 1883. I was twenty years old in '83. Those visits continued up until 1901, and after father's death, I made two or three visits, I think, to the property. I have been down in the mine to the 1500. I would go through the property with father and Captain Hall. Captain Hall was the Superintendent father brought up from Utah when Marcus Daly quit. He came up in 1880. Father brought Mr. Daly to Utah from Ophir. They came up in '76, that was long before the railroad. The railroad

extended just to northern Utah, and they had to stage it from there up here. I have had intimate knowledge of the operations of the property since the early eighties. I would always go through the property with father, and the Superintendent and take a general interest in it. I have been personally interested in mining properties and am now, other than the Alice. I am interested in properties in Utah, California and one in Nevada. In California, I have a property under lease and bond and another property there I am patenting. As regards the ores that were disclosed in the workings in the mine, as I visited it,—well in the early days they were working what they called the silver ores, the free ores, that is below the water level, and in the pan amalgamating mill they had to mix the oxidized ores with those ores to get a high saving, and I think that the oxidized ores extended to the best of my recollection either to the two or three hundred foot level. The ores that they milled carried gold and silver, those were the principal values. In those days we knew of those large zinc blende ledges, zinc blende ores on practically all of the levels below the oxidized zone. The oxidized zone extended to either the two or three hundred level in the mine and to the best of my recollection the zinc blende was disclosed in all the levels to the 1500. I do not know of any variation in quantity. In the early days, of course, whenever they got any of that zinc blende, in the mill, it made the bullion very base. They tried to keep it out and the free

ores that were mined occurred on each side to the best of my recollection, on each side of those big base veins. They simply left those large bodies standing there, they could not work the ores or treat them. I do not remember what significance the copper had in the ore in the early days, for at that time they were still after the free ore,—the sulphide ores. Subsequently the care of the property was placed in the hands of Captain Buzzo, I knew him. I visited the property two or three times a year while he was there with us. I had correspondence with him, concerning the condition of the property while he was there. I recall the letters that have been introduced in evidence here. In a general way and mostly from newspaper articles during this period, and down to the present time, I have kept advised of the general development of the Butte camp; and such other information in relation to the Alice as I got from the parties in charge of the property. My experience in the mining business has been such, I believe, as to make me feel that I could form a fair estimate of the value of mining property. I am now in the mercantile, real estate and mining business; the agreement regarding the large block of stock belonging to the Walker interests, that was purchased by Mr. Ryan, or the Butte Coalition, was made in September 1905, and the deal was consummated in March 1906; and my interest in the stock was one-fifth of the stock that belonged to father, I think it was 56,300 shares. I joined with the rest in the sale, although I did not

want to. M. H. Walker, who was the party who made the deal,—the escrow papers were signed by M. H. Walker, by D. F. Walker, his agent, and O. K. Lewis, representing the S. S. Walker estate. None of the names of father's heirs were on the escrow papers, but we did turn in our stock. M. H. Walker agreed to deliver between two hundred twenty-five and two hundred fifty thousand shares and without our stock he could not have done so; without my stock in the estate, he could not have done so. After my father's death M. H. Walker took more interest, father was the main mining man of Walker Brothers. Of the shares I now have, my father gave me 100 in 1880; 360 shares came from my mother's estate, and after Mr. Ryan had bid the fifteen cents a share, which was in September, 1905, in January, 1906, I bought 1650 shares, and Mr. Ryan paid the balance of the purchase money in March, 1906, about three months later. I did not sell, and still hold my individual shares, and purchased more, because I thought as soon as Mr. Ryan and the big fellows got hold of it, they would work it vigorously and make it what it should be. I certainly would not have bought any more stock if I thought they would leave it a dead one like the Walkers had. Q: Considering what you knew of the property and the development of the Butte camp, Mr. Walker, had you a desire to have the property sold at the time it was sold, in 1910? Objected to by defendants. MR. WALSH: I will inquire of the witness then, why you protested against

the sale, and why you did not want to have it consummated? MR. EVANS: Objected to as immaterial and irrelevant, and it is incompetent. Mr. Walker has not shown any qualification to testify to value. Said objection was overruled by the court, and exception noted by the defendants. Q: I want you to state why you protested against it, and why you did not want to sell. A: Well, in 1901 and 1902,—I think I was at the property both of those years, and I had gone through the property with Captain Buzzo, and we were discussing those large bodies of zinc blend ores, and I think it was early in 1902 that I instructed the Captain to take a carload sample, take it from different parts of the property at that time; I think the water was up to either the six or seven, and on that account he had to take the samples from above that point.

MR. EVANS: I object again to Mr. Walker stating these things, proving specific things that he told the superintendent to do. MR. WALSH: I want to a lay foundation; I want to prove the basis of his judgment, upon what he based his judgment concerning the value of the property. MR. EVANS: It is incompetent, irrelevant and immaterial. Thereupon the court overruled said objection, to which ruling the defendants excepted. And I think it was early in 1902, that I instructed the Captain to take a carload sample from different parts of the property,—the water at that time being either up to the six or seven hundred, and on that account, he had to take the



samples above that point,—and shipped them to me at Salt Lake and the Captain did so. He shipped me a carload of ore,—50800 pounds, which I wanted to test and see if I could make a separation, or concentration, and made a market for it. The ore was shipped to the Taylor-Brunton mill. I went down there, had the whole care sampled, and after it was sampled I had to send it to Bingham where there was a small concentrating mill, which was equipped with four jigs and two Wiffley Tables, and the boys who were operating that mill were the Bemis Brothers. They had had lots of zinc-lead ores from the Bingham camp, and they made a test. MR. EVANS: I don't know if the court expects us to renew our objections; he is going to give the results of these tests. THE COURT: He is telling you why he objects to this sale, and upon what he bases his opinion of value; I don't know that that is very material. Objection overruled, to which ruling of the court the defendants then and there excepted. MR. EVANS: So much of this is so clearly incompetent that we should not be compelled to point it out in a brief. They concentrated 3.2 tons into one, and got a product, and I got the values in a complete memorandum and the A. S. & R. receipts. The shipment was taken first to the sampling works, and the pulp sent to me, of which I made the sample of the crude ore. Exhibit 1, Walker, is the Taylor-Brunton sample, Lot 1, Concentrates, marked "Class All Assembled." It shows weight of ore 17460 pounds,

average moisture 7 per cent, which equals 1222 pounds, dry weight of ore 16238. When assembled the ore was sent to Bemis Brothers; so that you may better understand, the ore having been shipped by Captain Bruzzo to the smelting works, I went down there and had it sampled at the Taylor-Brunton place, and I have given you the return furnished by them. The pulp was then sent to me and I instructed them to ship it to Bingham to have it tested in Bemis Brothers' mill; and Exhibit 2, Walker, is the return they gave me.

MR. EVANS: It is understood that this goes in under our objection that it is hearsay?

THE COURT: Yes.

MR. WALSH: We then offer complainants' Exhibits 1, Walker, and 2, Walker, in evidence.

(Said exhibits were thereupon received in evidence and are in words and figures, as follows:)

**Exhibit 1, Walker.**

No. 235

The Taylor & Brunton Ore Sampling Co.

Weight and Moisture Certificate.

Alice Ore 1 Lot Concls. Class All Sampled.  
Transferred from

R.R. Car No.	Gross Weight.	Tare.	Net R.R. Cars No
W1919	48460	31000	17460 P G 60250
Weight of Ore			17460
Average Moisture, 7 per cent			1222

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Dry Weight of Ore, 16238

Salt Lake City, Utah,

April 3, 1902.

## THE TAYLOR &amp; BRUNTON ORE SAMPLING CO.

J. R. W.

Exhibit 2, Walker.

Bingham, Mch 30th, 1902.

Mr. J. R. Walker,  
Salt Lake City.

Dr Sir

Herewith I hand you Bill Lading Car Alice  
Concts, also have shipped by Exp today Box  
samples to J. R. Walker S. L. C.

Respt Yrs

F. H. BEMIS.

Alice ore test.

Ore milled mill weight	50450 lbs Gross
Tailings " " "	34413 Net

Ore made

No. 1 Jigg Comp No. 1 "Crude"

Sample No. 1 1376 lbs Gross

" " " " " 2 ore Run

Sample No. 2 672 lbs "

" " " " " 3 Ore Run

Sample No. 3 522 lbs "

" " " Compts Nos 1 &amp; 2 Re-Jigged

Sample No. 4 350 lbs "

Nos. 2, 3 &amp; 4 Jiggs Comp No. 1

Sample No. 5 2265 lbs "

" " " " " " " No. 2

Sample No. 6 3550 lbs "

" " " " " " " No. 3

Sample No. 7 1555 lbs "

" 1 Table " No. 1

Sample No. 8 675 lbs "

"	"	"	"	No. 2	
				Sample No. 9	420 lbs "
"	2	"	"	No. 1	
				Sample No. 10	810 lbs "
"	"	"	"	No. 2	
				Sample No. 11	750 lbs "

A—Lead      Streak on Tables

B—Iron          "      "      "

C Zinc          "      "      "

D Quartz       "      "      "

E—Tailing Run Slimes

F Crude Ore Run Slimes

Jig ore from Crude ore No. 2 Jig.

Compartment No. 1 aa

"          "      2 bb

"          "      3 cc

Jig ore from Crude ore No. 3 Jig.

Compartment No. 1 ee

"          No. 2 ff

"          No. 3 gg

Jig ore from Crude ore No. 4 Jig.

Compartment No. 1 hh

No. 2 ii

No. 3 jj

Recrushed tailings x

Sample tailings No. 4 Jig y

Alice Ore Tailings test.

No. 4 Jigg      No. 1 Compl.

Sample No. 12 640 lbs. Gross.

" " "      "      2 "

Sample No. 13 2870 "      "

" " "      "      3 "

				Sample No. 14	1050	"	"
"	"	Table	"	1	"		
				Sample No. 15	560	"	"
"	"	"	"	2	"		
				Sample No. 16	890	"	"
"	2	"	"	1	"		
				Sample No. 17	940	"	"
"	"	"	"	2	"		
				Sample No. 18	950	"	"

Total lbs. ore made as shipped 18275 lbs. Gross

Jigg ore 8 8-10%

Table " 12.5 "

Slimes tailing & other special samples marked out but not numbered.

Ore made by No. 1 Jigg was Re-Crushed with Tailing after being Re-Jigged.

I have the returns from the American Smelting & Refining Company, same being marked "Complainants' Exhibit 3, Walker."

MR. WALSH: We offer this in evidence, complainants' exhibit 3, Walker.

MR. EVANS: We make the same objection.

(Said exhibit 3 was thereupon received in evidence, and is in words and figures as follows.)

Exhibit 3, Walker.

American Smelting & Refining Co.,

Germania Plant.

Salt Lake City, Utah, April 14, 1902.

Bought of Walker Bros.

Lot 1, Class Conc. Alice Ore.

*Anaconda Copper Mining Co. et al.* 841

	Ozs. Gold Per Ton.	Ozs. Silver Per Ton.	Per Cent Lead.	Per Cent Copper (Wet)
Sampled by T. H. B.				
Assay				
by Umon	.25	12.4	21.0	
Assay				
by Ellis	.25	12.0	22.0	1.1
	—	—	—	—
Average				
Assay	.25	12.2	21.5	1.1
Weight of entire lot, 17460 Lbs.				
Less moisture 7%		1222 "		
Dry weight of ore,				
		16238 Lbs. at \$10.13 per ton		\$82.25
				—
				\$82.25

This exhibit 3 shows that the concentrates produced \$10.13 net, after the charges were deducted. Exhibit 4, Walker, is an assay sheet of the carload furnished to Mr. Bruce, showing the contents of certain ore furnished by Captain Buzzo, it is dated March 22, 1902. One contains gold .14 ounces, silver 9.1 ounces.

MR. EVANS: We make the same objection.

Copper 1.4 per cent, iron 12.4 percent, zinc 18 percent, silica 33 per cent; signed Henry Rivis Ellis, charges \$5.00. This was the assay from the pulp of the carload which was shipped to Taylor-Brunton, and sampled by them before it was sent to Bingham. I made a further effort to ascertain what value the zinc ores contained, and it

was either in '91 or '92 we shipped two car-loads to the Empire Zinc Company, of Canon City, Colorado, and exhibit 5, Walker is a report or analysis on two cars of Alice ore from Butte, Montana.

MR. WALSH: We will introduce that.

(Whereupon said exhibit No. 5 was introduced and received in evidence, and is in words and figures as follows:)

Exhibit 5, Walker.

THE EMPIRE ZINC CO.  
CANON CITY, COLO.

Report of analysis on—Two cars of Alice ore,  
from Butte, Montana.

	Au	Ag	Pb	Zn	Fe	Si.O <sub>2</sub>	Cu
Car No. 3048	0.08	8.9	7.5	17.8	7.6	47.9	1.2
Car No. 3150	0.08	9.7	7.5	18.0	7.6	48.0	1.3

E. T. SATCHELL,

Chemist.

MR. EVANS: Same Objection.

I do not know what was done with that consignment of ore; this is the assay certificate I happened to have with the other papers. The exhibit marked "Exhibit 6, Walker," the three sheets,—they are the assays of the different products that were made in this mill in Bingham; for instance, No. 1, Crude sample, 3676 pounds; that gives the weight of the different products that were made and these assays are the assays of the different products.

MR. WALSH: We offer that as well.

MR. EVANS: Same objection.

THE COURT: Same ruling.

(Whereupon said exhibit 6, Walker, was introduced in evidence, and is in words and figures as follows:)

**Exhibit 6, Walker.**

Assay Office and Metallurgical Works.

217 South West Temple Street,

Salt Lake City, Apr. 2nd, 1902.

Samples of pulp Deposited by Alice My. Co.

Percentages,

Date: Apr. 2nd, 1902.

Marks		Gold oz per ton	Silver oz per ton	Lead per cent	Copper per cent	Iron per cent	Zinc per cent	Silica percent (mol)
No.	A	0.24	12.60	75.0	0.1			
	17	0.22	13.80	34.0	0.8	16.0	13.5	2.6
	6	0.10	9.70	16.0	0.2	24.4	13.0	4.0
	10	0.14	13.90	30.4	1.1	17.0	16.0	2.7
	13	0.16	11.20	15.5	0.4	26.0	13.0	2.8
	12	0.66	13.90	33.5	0.7	19.0	10.0	2.7
	18	0.10	12.30	11.5	2.8	17.0	27.5	2.6
	15	0.26	13.20	37.0	0.8	18.0	9.0	2.0
	8	0.22	14.30	34.0	1.0	16.5	11.0	1.9
	5	0.16	11.90	32.5	0.7	16.4	12.0	5.0
	B	0.20	12.10	15.0	0.4			
C—Zinc		0.12	9.90	0.6	2.2			
C—Silica		0.04	3.60	0.0	0.1			

Date: Apr. 4th, 1902.

No.	5	0.16	11.90	32.5	0.7	16.4	12.0	5.0
	B	0.20	12.10	15.0	0.4			
C—Zinc		0.12	9.90	0.6	2.2	9.0	40.0	12.4
C—Silica		0.04	3.60	0.0	0.1			
No.	1	0.08	10.20	16.5	1.3	15.4	23.5	10.8



E—							
Tail. R. S.	0.08	7.50	6.5	1.1	7.0	18.0	45.6
F—Crude							
Slime	0.10	9.00	8.5	1.0	8.0	18.0	41.0
Y. Tail	0.10	7.60	3.5	0.9	10.2	18.0	45.2

## HENRY RIVES ELLIS.

I have been dabbling in mines for the last ten or twelve years, off and on—longer than that. By that I mean buying and selling. Q. From the information that you had concerning the Alice Mine, and your knowledge of the conditions, what do you think as to whether the thirty thousand shares of the Anaconda stock represents the fair value of that property? MR. EVANS: Objected to as incompetent, irrelevant and immaterial, the witness has not qualified. Q. What, in your judgment, was the fair market value of that property in the month of May, 1910? MR. EVANS: We make the same objection; the witness has not qualified. THE COURT: I doubt if he has. Overruled. To which ruling of the court the defendants then and there excepted. From the information that I had, concerning the Alice mine, and my knowledge of the conditions,—the only way I could place a value on it would be to take into consideration the vast value of that zinc blende; Captain Buzzo figured it one million and a half tons, and figuring the average sample that Buzzo sent me the carload of, figuring that,—I would make a very large discount,—\$30.00 gross, and one and one-half million,—I would make a discount,—I think that stock was worth \$25.00,

but without taking into consideration the chances of getting copper at depth, taking the Alice property, there are three ledges, beginning at the Valdemere through the Magna Charta and the Rising Star, over four thousand feet in length; there are three ledges there; between the Alice and the Blue Wing there are five other lodes, ledges coming in from the southeast, beginning with the Midnight, and on the north of the property there are two other ledges; taking it altogether, there are upwards of twenty thousand running feet of apex in the Alice property; you take the chances of getting copper at depth; this average sample I have is 1.4; it is higher than what the Anaconda Company is producing today; I don't consider the Alice mine today, or for a year or so past,—with zinc developments, I don't consider it is high at par, which would be ten million dollars for the property.

Cross Examination.

I think I was elected a director of the Alice Company in 1884. At one time I was Vice-President. After father's death, my uncle, M. H. Walker, succeeded father, and I was put in as Vice-President. My father died in January, 1901. From 1901, until this deal was made with Mr. Ryan and consummated in 1906, I was Vice-President of the Company. The Alice property was originally owned by my father and his three brothers,—The Walker Brothers. I think the Company was incorporated about 1880 or '81, my father becoming the President and active head of the Company. He had had a great deal of mining experience. He

had mined in Utah, at Ophir, Park City, and Bingham. Mining was not his chief business, he was interested in the banking, mercantile and real estate business. My father came to Butte very frequently until the shut down of the Alice properties, and kept in touch with them in Salt Lake. If I remember correctly the mills were closed down in either 1893 or 1894, and after that it was just a question of lessors or tributors selling ore to the smelters. During the time the Alice mine was operating, my uncle M.H. Walker, paid but little attention to the property, father was the main man. M. H. Walker was Vice-President and on my father's death succeeded him as President, and gave what attention was necessary to the Company. He is still living.

I think it was early in 1902 that I obtained these samples from Mr. Buzzo. I had been up to the property and talked it over with the Captain. We went down and looked at these bodies of zinc blende ore, above water level. At that time the water stood at the six or seven hundred; and the Captain figured out, took the gross value of those zinc ores,—he figured it \$30.00 and he estimated there was at least one and one-half million tons in the property. I instructed him to send the samples down instead of my uncle, the President, because I was looking into the zinc ores at that time. Zinc ores were going better than fifty per cent and were marketable. I told the Captain to take the carload of samples from all levels where he could get it above the water levels, and from all

the faces. Take it in the Alice, every crosscut that was driven north from the shaft was through these three ledges. To the best of my recollection, the zinc ores were in the north ledge. The crosscut is driven north and the levels are driven each way. In some places the north and middle veins were close together, in the Magna Charta they were a considerable distance apart, and in the Alice much closer. I do not think they ever join, I don't remember, it is such a long time ago. The weight of the car of concentrates was 50800 pounds gross. Returns on that ore were \$10.13, after taking out the charges. I have already given the different values. In shipping ores of that class, you could not make any money on that ore, but I was figuring on getting a process and having a plant at the mine. Taking this ore as it stood and shipping it to Salt Lake and having it concentrated, and the concentrates shipped where you pay \$3.20, you would lose money on it just the same as if the Anaconda Company shipped its ores to Salt Lake. The Alice ore is blocked out and you have your shafts and crosscuts; and with a little repairing, and the levels run, you would mine that ore for \$2.00 a ton, and put it on the surface, and in that grade of ore you have got gross \$33.68. Shipping that ore to Salt Lake, I was not trying to find if I could make money on it, I was trying to find out if we had a marketable product. This \$10.13 does not show that there would have been a profit on that ore shipping it. You would have to own your own plant and make

a success of it. I make the gross value of the ore \$30.00,—without zinc \$27.38 in the concentrates. I will tell you the way I figured; 90 per cent of the gold, and figuring gold at \$20.00, that is \$4.20, the sample went .25 gold in the concentrates. Figuring the value is \$29.30 gross, I figured that zinc, which is in this concentrate,—there was a product there, 40 per cent zinc, that I threw away and did not keep any track of threw it away simply because at that time we had to have zinc above 50 to be able to sell it. The separation process would have come later on. That part of the profit, this \$10.80 was just the net returns from the smelter. I got that assay of \$29.00 or \$30.00 from plaintiffs' exhibit 4, Walker, that gives .14 gold, 9.1 ounces silver, and I figured silver at 55 cents; 9 per cent lead, which I figured at \$7.20, 1.4 per cent copper is \$3.50, at 12½ cents. I did not figure iron at all. I figured zinc at \$10.80. I wanted to know the gross value in those immense bodies of zinc ore; of course, under any process that was known at that time, you could not save or treat that zinc ore at all. The zinc and lead could not be treated together, except as shown by this test here, and if we had had a plant here, we would have been able to make a profitable saving, I mean by the concentrating test. These figures show that that water mill made a profitable saving, you would have to have the separate treatment for the zinc, you want to add the smelter charges, the difference between \$27.80 and \$10.80. They charged us on this load \$17.00 and some-

thing a ton. I do not know if there was any process known in 1901 or '02 that would enable us to save and handle the zinc, we were trying to make a sample test for this water concentration, and we were saving all the values we could, and we thought we might get the zinc up to 50. The zinc went 40 something, and a lot in iron; but since that time I do not think there is any doubt but what these processes will save that much. I do not know enough about them to go into detail with them. I communicated the result of these to the other directors, but at that time there were in the Walker family two estates, the Alice stock was non-assessable, and the probate court would not allow the heirs to put up any money. The Alice was simply a dead one, and later on at the time of the sale, that is the reason I joined the others. One reason was to enable it to turn over to Mr. Ryan the amount of stock he held the bond on. If I had not turned in, he could not fulfill his contract. My personal stock I kept out and three months before Mr. Ryan consummated the deal, I bought 1360 shares, and I thought that he would work that vigorously. I think my uncle held 51200 shares in the Alice at the time of the deal with Mr. Ryan; and he is quite a wealthy man outside of that. Prior to the Ryan deal, I think the Alice stock had been dormant. After that deal I saw quotations on that stock up to seven and eight. My stock was not for sale. At the time I bought, I paid something over two for the 1650 shares. I understand that this stock went to ten, but I was

not watching the stock board, I thought Mr. Ryan would get busy and work it vigorously. I think that all stocks went up about that time, the boom being more in Butte than anywhere else. As regards what I did with these returns, when I got them,—I talked to Captain Buzzo, and at that time the Alice records were kept in the old Bank of Walker Brothers. Father owned a half interest in the Walker Brothers Bank and we sold out and went to another office, and I filed these in a pigeon hole and never looked at them for sometime, nobody was paying much attention to them but myself. When the property passed under the Ryan deal, I do not think they were called to the attention of the Alice new management. The old ledger would show it, but not in detail. I never did bring these reports to the attention of the new management, because I do not think they were interested, and in the meantime I had all these old exhibits in my private files. These letters that Mr. Walsh put in evidence I got out of the old Alice files in Salt Lake, after this suit was brought. They were old Alice files and records that were not turned over to the new regime, old letters and cancelled checks, and all other papers that were not considered of any importance. There is a room full of them down there now, but they are all kept. I went through them and selected the letters that Mr. Walsh used. During those years that those letters of Mr. Buzzo show that a process was being sought for treating these ores, we were working together. I do not remember if I com-

municated this information about these assays to the other stockholders, I might have. My brother was with me, I might have talked with him or to Mr. M. H. Walker, but I have no definite recollection about it. I do not know whether that was in my protest or not, at the time of the stockholders' meeting of 1910, when it was resolved to sell the property. I did not at that time give that information to Mr. Ryan, or any of the officers of the company.

(Witness excused.)

MR. WALSH: Plaintiff rests here.

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#### DEFENDANTS' CASE.

[Testimony of C. F. Kelley, for Defendants.]

C. F. KELLEY being first duly sworn as a witness on behalf of the defendants, testified, in substance, as follows:

My name in full is Cornelius F. Kelley. I am an attorney at law. I testified upon the temporary injunction here in this case on behalf of the plaintiffs. I stated then my connection as attorney with the different companies known as the Amalgamated Companies. I have been attorney for the different companies known as the subsidiary companies of the Amalgamated Copper Company, including the Anaconda Copper Mining Company, since about the first of January, 1901, and at different times after its organization I also acted as attorney for the Red Metal Mining Company in Montana and in the East. As attorney for these subsidiary companies in the East, I was familiar



with the history of the inception of the idea of consolidating the different companies, the property of the different corporations into the Anaconda Copper Mining Company, that is, the different companies whose properties were transferred to that company in 1910. The idea of making that consolidation I think was first conceived early in the year 1910. As I remember after the plan had been discussed and agreed upon, steps were taken at once to put it into execution. I haven't any doubt that the consolidation as carried out was not conceived until after the month of November, 1909. When that consolidation was first conceived and planned, the Alice was not thought of at that time, with the general plan of consolidation. The plan of consolidation included the transfer of the physical title to the properties of the mining company known as the Red Metal Mining company, or those properties which had formerly been known as the Heinze properties; title to these properties, as I suggest, was held by the Red Metal Mining Company; all of the capital stock, that was issued at least of the Red Metal Mining Company was held by the Butte Coalition Company. The Butte Coalition Company was a holding concern with a capitalization, as I remember it, of fifteen million dollars; the only asset which the Coalition Company had in addition to Red Metal stock was its holding of the Alice stock; inasmuch as the Red Metal Mining Company, or the Red Metal Company, it was planned, would be dissolved after the transfer of the title to the phys-

ical properties held by it, and the Anaconda stock distributed to the shareholders of Butte Coalition, it was deemed inadvisable and inexpedient to maintain so large a corporation organization merely for the purpose of carrying a stock ownership in the Alice Company, and for the purpose of avoiding the necessity of continuing the existence of the Coalition Company, it was decided to embrace the Alice properties in the general plan of consolidation. The properties of the Red Metal Mining Company were situated in the heart of the copper district in Butte, and were adjacent to and intermingled with the properties of the other corporations that were becoming a part of the consolidated Anaconda Company. On the other hand, the properties of the Alice Company were rather remotely situated, northwesterly from the copper district, or outside of what was known at that time, or in fact still is known, as the boundaries of the copper district, and it was not necessary on account of the reasons that led to the consolidation of the other properties, to include the properties of the Alice Company. I think I testified upon the temporary injunction hearing that I was present in New York at the meeting of the directors of the Alice Gold and Silver Mining Company at which the resolution was adopted for the sale of its properties to the Anaconda Company, and calling a stockholders meeting for the purpose of considering and ratifying that action of the board. I was there in the East at that time and prior to that time. The plan from the inception of the gen-

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eral idea of consolidation was to sell the properties of the Alice Company to the Anaconda Company and at or prior to this meeting a meeting of the stockholders of the Alice Company was called, in the event that the stockholders should ratify the sale by the directors and the properties be conveyed, that there should be a dissolution of the Alice Gold and Silver Mining Company,—as a matter of fact, I think that prior to that time, the time of the Alice directorate meeting, we had represented to the New York Stock Exchange as a condition to the listing of the stock, that these subsidiary companies, whose holdings would consist of nothing but Anaconda stock, would be dissolved in order to eliminate any objection that the Stock Exchange might have to double subsidiary companies, or holding companies within holding companies. I know that was the purpose of the officers and directors of the Alice Company at and prior to the meeting calling this stockholders meeting. The record shows that the directors and stockholders meetings in connection with the dissolution of the Alice Company, authorizing a proceeding in court for that purpose were held the subsequent year, in April or May, 1911. I know of no specific cause for the delay other than that nearly everybody was pressed with a great deal of business, and I assume that the matter was simply neglected; that is all. It was not a matter that there was any particular hurry about. In the annual report of the Amalgamated Company which has been put in evidence for the year 1907,

a reference was made in connection with the operations of the Boston and Montana Company, one of the subsidiary companies, to the production of ore by the Boston and Montana, a good production, and the Red Metal Company. Referring to Complainants' Exhibit "M," it is headed this way. "At a meeting of the Board of Directors of the Amalgamated Copper Company in May, 1907, the Secretary was authorized to issue to its stockholders the following statement, together with a condensed balance sheet of the Company as of April 30, 1907." The particular statement in this report so authorized is the following: "A large and valuable ore territory in the Pennsylvania mine, mentioned in the report of last year has been developed, and at present is supplying a daily output of ore from the Boston and Montana and Red Metal Mining Company." Yes, sir, I know what mining that was. I haven't any doubt that that statement refers to a condition which existed south of the Pennsylvania mine in Butte. When the Heinze properties were acquired by the Red Metal Company, it was found that title to a great many lots in the placer claims, lots that had been previously an addition to the City of Butte, that title was vested in the Red Metal Mining Company in that same district, in the same addition, and in fact in the same blocks, contiguous lots, the title would be vested in the Boston and Montana Company, and then, as I recall it there were a number of lots in the same addition, title to which was vested jointly in the Red Metal Mining Company

and in the Boston and Montana, that is, an undivided interest. They were co-owners in these lots. At the time that the disputes between the Red Metal Mining Company and the Anaconda and B. & M. and other Amalgamated Companies were adjusted, an estimate was made of the territory, or the ground embraced within these lots, and of the amount of ore proportionately which each company would own beneath the surface of these lots. It was impossible to work these lots separately and obtain the ore therefrom, and there was a joint operation conducted from the Pennsylvania mine because it was the nearest and most accessible to the ore bodies or mineral that underlay these lots. There was a joint operation there, and a charge made against the Red Metal Mining Company for extracting and mining the ore, and the profits were divided upon the basis of the proportionate interest. I have forgotten exactly what those were. I remember that the ore was tagged separately and my recollection is that that ore was known as the Red X ore, simply as a means of designating it. There was some doubt or difficulty in resolving the ownership of these ores beneath these placer claim 1911 and made necessary some equitable division of them. In the first place, the title to the lots had been de-raigned from the original placer patentees; there were some defects, of course, in the chain of that title in instances, but that was not serious. The surface of these placer claims had been located as quartz claims; there were innumerable conflicts

not only between the placer and quartz title, but between different quartz claimants, and it would have been almost impossible to have determined, upon any basis accurately, the legal status of the title to those ore bodies, because of the differences that might have arisen regarding extralateral rights based upon these intersecting quartz claims, the ownership of which it would have been a matter of more or less difficulty to establish, if, indeed, they had any rights against the placer claimants.

Cross Examination.

I am Vice President and Managing Director of the Anaconda Company. I am not so sure that the purpose that I speak of on the part of the directors of the Alice Company to effect a dissolution of that corporation, entertained at the time that the sale of its property was authorized, was expressed in any action of the board. My recollection is as you pointed out on the hearing for the temporary injunction in this case, that the circular letter did not make any reference to that intention. No, sir, I don't think it disclosed quite clearly a purpose to hold the Anaconda stock as a permanent investment, because I know it was conceded by the opinion of the directors for the Alice Company and of myself, that under the laws of the State of Utah, the Alice Company did not have the authority to hold permanently the stock of the Anaconda Company. I did not interpret the letter to signify the purpose to hold the stock as a permanent investment. I know there was

no such intention; therefore, I think it safe to say that the letter did not disclose such a purpose. I am not aware of any written document in which that purpose was expressed if it was entertained. I have not searched the records with the purpose in view to determine when first the idea seems there to be expressed of a purpose to dissolve. I am not a member of the board of directors. I only speak with reference to conversations I had with members of the board, and I speak from the discussions I had of the entire consolidation, with which I was at that time entirely familiar. I do not recall any specific conversation with any specific director. I do recall that when the matter was taken up by the directors of the Alice Company that there was some discussion as to the power of the board of directors to sell all of the property of the company. That matter I remember was referred by some of the directors to their individual counsel, and I remember that in determining to go ahead with the plan it was thought that there could be no legal objection to carrying it out along the lines that it was carried out; in other words, that if we could convert the assets of the Alice Company into liquid shape, either in the form of stock which might be sold upon the market and converted into cash and distributed, or into shares which might be distributed proportionately among the shares, there could be no objection to the plan. That was the general plan and I am sure it was participated in by all of the directors and by counsel for the Alice Company. I



refer particularly to Mr. Garver. The firm of Shearman & Sterling was acting as attorney for the Amalgamated, and for the Butte Coalition, and in this particular matter Mr. Garver represented that company. He was a member of the firm of Shearman & Sterling. I think they had been attorneys for the Amalgamated since shortly after its organization, but I may say that in that connection Mr. Dickson, one of the directors of the company had his personal counsel advise him relative to the matter. I refer to Mr. Dickson, a director of the Butte Coalition. I remember very distinctly that Mr. Dickson said before he voted or acted upon that that he wished to be advised by his counsel as to the legality, but as to whether he did or not I merely speak from hearsay. On the conclusion of the proceedings of that meeting, at which the proposition to submit the sale to the stockholders was passed, both Mr. Thornton and Mr. Carson resigned as directors, because I think they were going abroad for an extended trip. It is my recollection they went about that time. I have never correlated the two things before. I don't think the Amalgamated was ever interested in any way in the International directly. The United Metals Selling Company owned forty per cent of the International. The Amalgamated did not own all of the stock of the United Metals Selling Company, at that time. It has since about 1911. That company is going through dissolution. The Anaconda Copper Mining Company acquired some of



its property. The International Smelting Company acquired other of its property. The International Smelting and Refining Company is a New Jersey corporation; the International Smelting company is a smelting company that has been organized under the laws of the State of Montana. The International Smelting and Refining Company owned the smelter down in Utah prior to this last transaction that you are inquiring about. The property of the International Smelting and Refining Company in Utah consisted of a smelting plant, a lead and copper smelter, at Tooele, and a short railroad known as the Tooele Valley Railway, the stock of which was owned by the International Smelting and Refining Company. The Anaconda Company has not acquired directly any of the properties of the International Smelting and Refining Company, but has acquired stock ownership in those properties in the companies that own the properties; in other words, it is a stock transaction and not a transfer of physical title. The International Smelting and Refining Company, a New Jersey corporation, was the owner of the capital stock of the Raritan Copper Works, a New Jersey corporation, The International Lead Refining Company, an Indiana corporation, the Tooele Valley Railway, a Utah corporation, and owned the physical title to a copper and lead smelting plant in Tooele, Utah, known as the Tooele plant; the title to that plant was transferred to the International Smelting

Company, a separate corporation,. That is a new company. Under a certain transaction between the International Smelting and Refining Company and the Anaconda Copper Mining Company, the Anaconda Company has acquired the stocks of these subsidiary companies that were owned by the International Smelting and Refining Company. It amounts to this, the Anaconda Copper Mining Company has acquired the stock of the subsidiary companies of the International Smelting and Refining Company. The subsidiary companies are the International Smelting Company, the Tooele Valley Railway Company, the Raritan Copper Works and the International Lead Works, of Indiana; so that really the Anaconda Company has become the holding company of those assets where the International Smelting and Refining Company was the holding company. The International Smelting and Refining Company holds no other assets except current assets, cash and things of that character, but no other physical properties, nor stocks of mining company. My recollection that the total consideration paid by the Anaconda Company was something in excess of nineteen million dollars. It was a cash transaction as far as the International Smelting and Refining Company was concerned, that is, cash, and the assumption of liabilities. The financing will be determined largely by the acceptance or to the extent that an acceptance of an offer made by the Anaconda to the shareholders of the International is accepted; the Anaconda Com-

pany made an offer to International too, but its assets had a valuation in excess of nineteen million dollars, which was the assumption of liabilities, and the other, the balance being a cash payment. In connection with the transaction, the Anaconda Company made an offer to exchange with the shareholders of International upon the basis of 3.3 shares of Anaconda for one share of International. The difference between the amount of that will be represented by the exchange thus affected and the total amount of cash that will have to be paid will govern the financing. It will contemplate not an increase in the authorized capital but in the issued capital stock. The Utah property consists of the smelter and the railroad. They do copper smelting at the International—copper and lead. The Raritan Copper Works is a corporation which owns a large copper refinery at Raritan, New Jersey, and the stock of a terminal and freight warehouse association, that is, the refinery, to which copper has been shipped for sometime past from the Amalgamated mines, that is, copper matte, for refining. Those are the works at Perth Amboy, New Jersey. The works of the lead company are at East Chicago, Indiana, a short distance outside of the City of Chicago. It is a lead refinery, to which the lead bullion from the works in Utah is shipped ~~the~~ Refining.

#### Re-Direct Examination.

The International Smelting Company, the successor of the International Smelting and Refining

Company, does not mine any ores; it is simply a smelting and refining company. At its copper smelter it smelts custom ores from other properties. It does not mine any copper ore or control any copper mines. Its copper operations are comparatively small; the company held a contract with the Utah Consolidated Company for the smelting of its output, and I think, it only amounts to three or four hundred tons a day of copper ores. Its lead smelter is situated at the same place, Tooele, Utah. The lead ores which it treats are all custom ores sent in by other mining operators.

#### Re-Cross Examination.

The total production of the Amalgamated Companies for last year, I think was two hundred and thirty-four million pounds. I don't know what the total Montana production is; that is both custom ore and ore produced by the Anaconda Company's mines. As to whether the custom ore is really a purchase and we pay the parties who offer the ores immediately upon the delivery of them to the smelter, not in all cases. In some instances we pay for the ores, buy the ore and keep the metal contents; in other instances we treat the ores on toll and deliver the metal content to the shipper. We have some very large contracts of that kind; for instance the North Butte Mining Company, which is the largest custom ore shipper to the Washoe Smelter, has its metals returned to it under its contract. Mr. Gillie could give you the figure that amounts to much better. The largest

single producer in the United States I think is the Anaconda Company, and I think it is the largest producer in the world.

(Witness Excused.)

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[Testimony of James L. Bruce, for Defendants.]

JAMES L. BRUCE, a witness called on behalf of the defendants, being first duly sworn, testified in substance, as follows:

Direct Examination.

My name is James L. Bruce. I live in Butte. My business is mine manager of the Butte and Superior Copper Company. I have been managing the Butte and Superior Company's property about fifteen months. I graduated from the Colorado State School of Mines in 1901, and went from there to Leadville, where I was with the Little Johnnie mine for several months, about six months, and I went from there to Cripple Creek, and was with the firm of engineers who did the general engineering business there for three or four years altogether; spent some time in Mexico, went from there to the Flat River District in southeastern Missouri, where I was for about three years as chief engineer and general foreman. The kind of property at Flat River was lead. From Flat River I went to the Joplin District, and I was for about six years assistant superintendent and manager of various properties. The nature of the ores that were produced by the companies I was connected with at Joplin were all lead zinc ores. The class of ores produced by the Butte and Su-

perior Company are lead, zinc and silver. A large portion of my engineering and managing has been in connection with the mining and reduction of lead, silver and lead-zinc ores. I have given a great deal of attention and study to the metallurgical treatment of them. I have made some tests and computations in connection with some ores that were purported to have come from the Alice Gold and Silver Mining Company in the last two or three weeks. I saw the ores myself at the assay office of the Anaconda Copper Mining Company and at our own test plants,—the test plants of the Butte and Superior. Mr. J. C. Febles gave me the ores that I saw at our test plant. He is the head or chief chemist for the Anaconda Copper Mining Company. I made a careful physical examination of the ores that I took down to the Butte and Superior plant, and I made some concentrating tests for several purposes, in order to determine the degree to which the mineral contents were disseminated,—how finely divided they were,—what the concentration of mineral contents would be into the fines and crushing; what the characteristics of the crystalline structure were; that is, as to whether the mineral was crusty, crystal or finely crystal, and to determine particularly what minerals in the separation the silver concentrated into. Those tests were necessary in order to determine whether the ores of the Alice could be treated profitably by any known processes. I found it was a very difficult ore to treat under any known process, for three reasons

or four; a great deal of the mineral concentrates into the fines in crushing, wherein it is more difficult to separate the different minerals, in fact practically impossible to separate the iron into the zinc to any marked degree; I found also that the silver did not concentrate into the lead concentrates, but that the lead concentrates ran practically the same as the crude ore; I found that a large part of the mineral was finely crystalline, so that it could not be filtered without fine crushing, and I think I have covered the principal difficulties in connection with the concentrating. I found in reducing those ores, that practically all of the silver values go into the zinc concentrates, not all, but a very large portion of them. On the ore that was treated, the ore would have no value either in the zinc ore or concentrates on any new process. There is some silver that goes into the lead concentrate, and that would be of value. My judgment as to these results is based on the analyses and assays that were given me of the products that were produced; these were made by Mr. Febles. These results were derived from the assays by compounding certain products, and by calculating the percentages; this showed a recovery of nineteen per cent of the lead in a lead concentrate. I am referring to the results of my tests. I have the assay results upon the crude ore that I was concentrating. As given me by Mr. John C. Febles, it is as follows: The crude ore analyzed  $3\frac{1}{4}$  ounces of silver, 7.05 percent of lead, 14 percent of zinc, 10.6 percent of iron; gold  $3/100$  of an



ounce; manganese 98/100 of one percent; insoluble 1.42 of one percent, and a trace of copper. That was what was given me by Mr. Febles as the assay results obtained by him upon the ore which I concentrated and computed my results from. The result of my test was the production of a lead concentrate analyzing 4-84/100 ounces of silver; 3/100 gold; 34 per cent lead; 12 percent zinc; 18.05 percent iron, and an iron lead middling. In that lead concentrate product there was recovered 6.8 percent of the silver, 19 percent of the lead, 3.35 percent of the zinc and 6.7 percent of the iron. There was also made a lead iron zinc middling, analyzing 5.12 ounces silver, 10.93 per cent lead, 18.7 per cent zinc, 22.2 per cent iron. This containing 32.7 per cent of the silver, 32.2 per cent of the lead, 27.7 per cent of zinc, 43.4 per cent of the iron. There was also made a zinc concentrate. The grade of this in zinc was so low that it was hardly proper to call it a zinc concentrate. The analysis of this was 4.75 ounces of silver, 5.36 per cent of lead 22½ per cent of zinc, 12.8 per cent of iron, and the recoveries into this were on the silver 20.8 percent, lead 10.8 percent, zinc 22.9 percent, and iron 38.1 per cent. The iron concentrates into the zinc very largely, and affects the value of them deleteriously very seriously. I know the location of the properties of the Alice in Butte. My opinion is very distinct that the ore of the character of which Mr. Febles gave me cannot be treated at the present time by any known process or known method. There would be con-



siderable margin between the cost of handling it and what you would realize from it at the present time. Taking ores with the following metals in them, of the general character as to iron and the other bases that were found in the other ore: .081 per cent copper, 4.105 ounces of silver, 3827/100000 of gold, or about 76 cents in gold, 10-64/100 per cent of zinc, 5-847/1000 per cent of lead and 49-91/100 insolubles, I would say that it could not at this time be treated profitably, as it would not be as good an ore as the one treated by me. The metals that could be derived from the treatment would not be as high as that which I have given. There has been great development of processes for working low grade or base lead-zinc ores. Taking it at any time more than four years, any time prior to the first day of June, ores of the general character as to iron and bases in the analysis I have, and when containing 12 ounces in silver, two in gold, two to five per cent in lead and two to ten per cent zinc per ton, mined from the ground of the Alice Company, it is my opinion that would not have been profitable at that time. The higher the percentage of iron the more difficult it would be to make it profitable. From the appearance of the Alice ore and my experience in handling it, I would say it is quite dissimilar to the Butte and Superior ore. There is a great deal more lead in it, and a great deal more iron. It has iron pyrite. In the Alice ores, judging from the samples I had, the silver does not concentrate into the lead con-

centrates. In fact, rather the reverse, while in the Butte and Superior ores, the concentration of silver into the lead concentrates is quite marked, the silver in the lead concentrates being of value, and in the case of the sample from the Alice there is no value in the zinc concentrates, while in the Butte and Superior ores, the silver, such as can be thrown into the lead concentrates, is of considerably more value than the same amount of zinc concentrates would be. In the analysis of the crude ore that I concentrated, the sample showed 3.25 ounces. I think about 6.8 per cent of the silver that was concentrated into the lead concentrate. The silver that would be saved would be worth nothing. The amount of silver shown in the crude ore was 3.25 ounces and if that was multiplied by 6.8 per cent, that would get the amount of silver in the crude ore. It would be about .22 ounces. The value of that in the lead concentrates would be between fifty and fifty-five cents an ounce, so that the value to the crude ore would be eleven or twelve cents. Out of the 3.25 ounces, the value or benefit I would get from the crude ore would be eleven or twelve cents. As to the tests I made, this is the recovery actually made by them.

#### Cross Examination.

I subjected about 4500 grams of ore to the test. I don't recall how many grams in an ounce. I should say 4500 grams would be about five or six pounds. I got this ore that I subjected to this test from Mr. J. C. Febles. The part that was subjected to the test was crushed through 20 mesh. I

also had other samples said to be from the same mine, samples of larger size, for character observation. I made the test at Mr. Evans' and Mr. Gillie's request. Both asked me to examine the ores. They said that they wanted me to examine some ores that came from the Alice mine and advise them as to what the value would be at the present time and also four years ago. We talked about it for ten or fifteen minutes, I suppose. I could not recall everything that was said. That was the main part of it. They wanted to determine the value of it. There was not anything said as to how I should determine the value of it, and nothing was said as to the process to which I was to subject the ore. I took the ore that was ground to 20 mesh and made a concentrator test by tabling on a small sized laboratory Wiffley type table and sorted the products in sorting tubes, weighed the amounts of the different products, and delivered them to Mr. Febles for analysis. I don't exactly know what quantity of ore was delivered to me for the purpose of making the tests,—something in excess of the amount treated. I think I said something in excess of 4500 grams. A duplicate was kept of the sample delivered. The ore crushed through 20 mesh was given to me. I directed that it be crushed to that degree of fineness. I did not see the crushing done. It was delivered to me in that shape. That was my judgment of the size to which it should be crushed,—maximum size,—to which it should be crushed after looking at the crude ore. Before giving it to Mr. Febles for

analysis, I subjected it to concentrating tests, by tabling on a Wiffley table, and sorting in sorting tubes, and that was the product that I delivered to him after the chemical analysis, that is, these concentrates that I have told you of. All I did was to do the concentrating, and that was in the laboratory, and by means of something identical to the Wiffley table process or similar to it. That is a table, flat table, covered with linoleum, and with wooden riffles running transversely of the table, moved by a head motion at the head end,—at the end of which the feed is fed to the table. This head motion has a differential motion, which gives the table a quicker motion at the forward end of the stroke, while at the same time a sheet of water washes over the table which is inclined; the heavier mineral particles settle onto the linoleum, and the lighter gangue particles are washed downward over the mineral particles by the sheet of water over the table. It is the ordinary Wiffley table process we know of in the copper concentrates. All I did to them was the concentration and separation of these products by sorting tubes. Sorting tubes are glass tubes which are set vertically with the diminishing size of the column as it goes downward, ending in a cylindrical column of some size, with a rising tube of water passing through the tube, with a spigot to draw out such particles as settle. The sorting tube as a sorting tube, that is similar to the laboratory tube, is not in use commercially; variations of that,—different classifying apparatus, are in use quite extens-

ively, both in the concentration of zinc ores and in the concentration of other ores. These concentrates were sized over screens before sorting different products. I think any chemist who is a capable chemist would be able to do that work. Any ordinary mill man would not be able to do that kind of work correctly. I have been with the Butte-Superior people about fifteen months. The processes in vogue there have undergone change since I came. They have been developed along the same lines that they were being operated upon at that time. They were not perfect when I came there and they aren't now either. I am really looking for some improvement now. The experimentation which is thus still going on began when the concentrator was built. Operation of that concentrator was started about the middle of the year 1912. Yes, the Butte and Superior had been doing something prior to that time. They had been doing work since their organization. I believe that was in 1906 or 7. They had apparently been at work on the thing for some six or seven years. When I arrived they had not made a marked success of it. Recently we have been operating with very satisfactory results, and very largely as a result of the perfection of the process. In 1906 or 1907, there was probably not any process known by which those ores of the Butte and Superior could have been worked successfully,—at least, it was not known to the Butte and Superior Copper Company. The processes at the time they first started milling those ores

were known, but they were not so well developed. They were not known well enough so far as I am able to speak, so I could tell that I could have gone in immediately in 1907 and operated successfully as I am doing now. In other words, it was in development. I think it is possible that at some time in the future these Alice ores can be operated successfully. Yes, sir, I do know something about experimentation going on now looking to the separation of the iron in zinc ores, carrying high percentages of iron. There are a great many different processes that are being worked upon for the treatment of such ores. They are electrostatic, electromagnetic, electric smelting, electric furnace work, and various chemical metallurgical processes, the Isherwood process, Mullen process and others. We have not tried them all. Nearly all of them have attracted quite a little attention. The electrostatic and electromagnetic have acquired the greatest standing in the metallurgical world through their successful application in some cases. They are in operation in few places. There are only a few places in the United States where they are operated on this class of ores. The electrostatic is in force in the Leadville plant in Utah and one or two other places. The electromagnetic is being operated in the Franklin furnace ores in New Jersey. I have seen these processes in operation, at the Franklin Furnace. They get their ores at Franklin Furnace in the State of New Jersey. I don't know what percentage of iron they carry. It is a different character of iron al-

together. It is a different mineral from that found in the Butte ores. Iron occurs in several different minerals. It occurs in manganite and in pyrites and chalcopyrites, the different combinations. When I speak of fourteen per cent iron, I do not mean fourteen per cent occurring as the element. I mean fourteen percent of iron,—in that case occurring as ironpyrite, principally as iron pyrite. I do not know what percentage of iron there is in the ores that are worked down in Utah by the electrostatic process. That is principally iron as iron pyrite. I regard the zinc ores in the Alice mine as altogether speculative in value. I consider that they may have some future value. The huff electrostatic process is an electrostatic process wherein the faces of the sulphide particles are charged by an electrostatic current, and from this charge become magnetic. I did not try any of these processes upon these ores that were furnished by Mr. Febles. At the Butte and Superior we use two processes,—the wet concentration and also the oil flotation process. The concentration that I made was by the wet concentration. I did not try the oil flotation upon this particular lot of pulp. I know Mr. Sherwood of the Butte-Duluth. He has done some work on the concentration of zinc ores. He did the work at the Butte and Superior Copper Company. I think he came there after I went there, and remained there for sometime. He left there sometime ago and is now with the Butte-Duluth. They are working copper ores.



Re-Direct Examination.

According to my judgment, the oil flotation process would not be suitable for the Alice ores. The tests I made of the Alice ores were sufficient to convince me as to whether the ores could be profitably treated by any process that is known to my profession,—metallurgy. The electrostatic and electromagnetic accomplish the separation of the different sulphides from each other. In some instances where the process happens to be applicable to the ore, a great many ores, without any reason show no successful results. In the case of the Alice ores, the electrostatic or electromagnetic process might separate any of the three metals from the others to some extent; the separation could not be expected to be perfect. That separation can be made preliminary to the wet process or can be made subsequent to it. The electromagnetic process that is being experimented with, usually requires the roasting of the ore. As to copper ores like the Alice ores, the presence of one per cent or half of one per cent would not add to the value of the ores unless it concentrated into a lead concentrate. That amount would not be detrimental except in so far as the penalty it would bring on the zinc concentrates by reducing the grade. The result of that would be presumed to be negligible. I stated in answer to Mr. Walsh that my experiment with the Alice <sup>ores</sup> would have a speculative value upon the development of a process by someone who could work them. I do not know of any process now that is even close



to perfection to treat those ores, that would make them commercial. I cannot conceive of any tonnage being mined there that would be profitable, figuring them upon the basis of treatment of a tonnage of 500 tons a day or even a thousand tons a day. I estimate the cost of a concentrator, that would get the results that I got, for 500 tons at about \$500,000.00, and one for 1000 tons per day would be about in the same proportion—it would run from \$750.00 to \$1200.00 to a ton of concentrates per day, for the total cost.

#### Re-Cross Examination.

As to a sample that was 14/100 of an ounce in gold, 9-10/100 ounces in silver, 9 per cent in lead, 1.4 per cent in copper, 12.4 per cent in iron, 18 per cent in zinc, and 33 per cent silica and solubles,—I think that could be treated profitably. I would say that the margin of profit on that would probably not be large in the Butte district. The troublesome element is iron in this treatment. That iron exhibits itself principally as iron pyrite, and it is observable upon an examination. If the ore carries any considerable quantity of iron pyrites, it ordinarily shows to the observer familiar with ores of that character.

#### Re-Direct Examination.

I could not attempt to state how much margin approximately there would be on that class of ore that Mr. Walsh gave me, without doing some calculating upon it. I could not give you an idea very well. I should say probably under a dollar a ton, figuring three and a half for cost of mining.

I think that class of ore Mr. Walsh gave me could probably not have been handled four years ago prior to the first of June.

Re-Cross Examination.

I think there has been apparently some substantial advance during that period.

(Witness Excused.)

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MR. EVANS: If the court please, we will offer the evidence of Mr. John Gillie taken on the injunction hearing, and it will be supplemented with a little testimony.

[*Testimony of John Gillie, for Defendants.*]

Whereupon the testimony of John Gillie, taken at the injunction hearing, was read in substance as follows:

My name is John Gillie and I reside in Butte. I am General Superintendent of Mines in the interest of the Anaconda Copper Mining Company. I have held that position about twelve years. My duties are such that they bring me in contact with the mines formerly owned by the six companies known as the Amalgamated interests, being the Boston-Montana, Anaconda, Butte and Boston, Washoe, Trenton and the Parrot. I was first with the Butte and Boston Company. It was in the year 1900 that I went to the Anaconda Company as General Superintendent of Mines. I have been in connection with the properties of the Alice Company since the acquisition of the interest in the Alice Company by Mr. Ryan, or the Butte Coalition Company, that was about five years ago. At

that time I assumed the Superintendency over the property of that Company, but without any definite understanding. I never obtained any portion of my salary from the Alice Company, but Mr. Ryan being interested in it, and they were his companies, I looked after some matters that came up, there were not very many of them. Shortly after Captain Buzzo died, Mr. Ryan informed me that he had an interest in the company or some of the companies, and he asked me to look after it, and I suggested the retention of Mr. Howard C. Buzzo, there, as he was familiar with the business. Mr. Carson, who was previously manager of the Red Metals Company, left about two years ago, and since that time I have been connected with the properties of the Red Metals, and have overlooked it. I was concerned in their operations or development, prior to that time in an advisory capacity, I remember in the selection of the shaft on the Tramway claim, I was consulted with reference to that. That was a claim in which the Butte and Boston originally owned a two-thirds interest. I have been in the workings in the properties of the Red Metals Company with Mr. Carson, in a sort of capacity as consulting engineer; for if we had any information from workings adjoining, it was available for him, and we could get some information from him. That is, each had access to the properties, respectively, as they saw fit to go down and examine them. Those were the properties that were formerly in litigation between the Amalgamated Companies on the one side and Mr.

Heinze's companies on the other, and they passed into the Red Metals Company, and the litigation ceased at that time; from that time on we never had any litigation with the Red Metals Company. I had nothing at all to do with the North Butte companies. I had access to their property, but I have not been on it for nearly three years. I presume I had access to all those maps, I have not examined their maps for a long time, I am satisfied with them. Our engineers visited their ground and their engineers visited our ground. Generally I keep informed of the work in the mines of the Ballaklava Company, to know where it would affect any property that we have adjoining. I know, of course, the Badger State claim, that is one of the properties that came under my general supervision. The property east of that is the Jesse claim of the North Butte Company, and east of the Jesse in the Denver and the Edna and the Parrott, and continuing on east is the Mat. I have seen maps similar to plaintiffs' exhibit 1. It is a map of the Butte district, which gives a general location of the groups and ownerships of claims. The Saukie East and Saukie West are given a color that would indicate that they are the property of W. A. Clark, but in 1910, the Anaconda Company acquired his interest in them. The Alice has had interest in them for twenty years. On the map, however, they are designated as Clark property. I know of a vein in the Butte camp following in a general way in part the course indicated by the black line on the

map, before me. This westerly extension I do not know on this black line. I know of a vein that extends in the same general direction, and extends also east of that point; we generally designate that vein as the Jesse vein of the North Butte Company, it runs clear through the Jesse claim, and also runs into the Badger State claim, and on eastward possibly to the Mountain Chief claim, or just to the north of it. I know of that vein extending through that country in that general direction, for a distance of about 2500 feet. It extends I know down through into the Adelaide claim, up into the Badger State that we know of, and it is a big strong vein, known as the Jesse vein, northwesterly and southeasterly; and in a general way pursuing the direction indicated by the black line on the map, through some of the claims. Where it is on the entire vein of the Jesse it is approximately correct. It has probably been developed 800 feet west of the Badger State, from the east end. Its identity is not known at any point, probably, excepting just near the east end of the Badger State claim. We know of the Jesse vein definitely, no more than we know it along the surface, it is pretty hard in the surface wash in that vicinity to determine the Jesse vein any more than we know of it going at least 800 feet into the Badger State claim. That is not a lone claim pursuing that general course in that neighborhood, southeast and northwest, but it is one of a series of claims. It is not the most remote of the series

in any direction, it is within the series; that is to say, there are others of the series farther north, and there are others farther south. There is a parallel fissure to the north of it known as the Berlin, which is shown on the map here, and there is a fissure in there that runs generally in the direction of the vein and parallel with it. They commenced to develop this Jesse claim about seven or eight years ago, and it became a producer of some considerable extent about six years ago. The Edith May claim is a little south of it, and there is an Edith May vein too; and running in a general way parallel to this other. There were developments on the Edith May vein as long ago as fifteen or twenty years, but it became a large producer some six or eight years ago. As to the developments upon the Edith May vein, they go westerly into the Chief Joseph claim, south of the Badger State, that is through the Miner's Union and Chief Joseph, and it is developed into the east end of the Chief Joseph at the present time. The Anaconda Company owns the Chief Joseph, and has owned it for two or three years. The Chief Joseph has only produced within recent years. I know another northwest-southeast vein, which is the next one south of the Edith May, and it passes through the Bell, Gray Rock, Wild Bill and Corra. The Corra was one of the Heinze properties, belonging to the Corra Rock Island Company, and that property was transferred at the time of the adjustment of the difficulties to the Red Metals Company, and from that Company to the Anaconda Copper Min-

ing Company. That vein has been developed probably a thousand feet westerly from the east end line on the Corra on some of the levels, not all. The claim immediately west butting up on the west against the Badger State is the Auroria, the claim west of that is the Belle of Butte. There has been considerable development on the Belle of Butte. It is down to a depth of five or six hundred feet, and the upper levels have produced a great deal of ore, say above the four hundred. It has been worked extensively for sixteen or eighteen years, and during that time it furnished silver ores to the old Silver Bow Company, the predecessor of the Butte and Boston, to be worked in their stamp mill. It has been worked ever since through lessors and tributors. The Anaconda Company got it a year ago last June from the Butte and Boston; and up to that time it remained a part of the Butte and Boston. The Auroria was a part of the Boston and Montana property and was acquired from the Boston-Montana about the same time. The Boston-Montana Company operated a copper smelter at Great Falls, and was engaged in the mining of copper at Butte from the early nineties. I think the Company was organized in 1887, and the smelter was started in 1889.

#### Cross Examination.

The generic term applied to the veins of this northwest-southeast series is that of fault fissures; and the veins that follow this particular direction are known generally as "Blue Vein" series. Characteristics of the veins of this series,

as developed in Butte, are that they are not generally or continuously mineralized; they are rather more in the shape of intermittent or pockety. They do not compare with the old quartz pyrite veins, or the east and west veins, as to the continuity of the mineralization through them. Many of these northwest and southeast veins are simply fault fissures that so far as disclosures have been made, contain no commercial ores of any account. Others have produced commercial ores from pockets or shoots found occasionally in the vein.

I stated in a general way that the Anaconda Company exchanged information with the North Butte Company prior to the transfer of these properties, we exchanged information of a general character with the Butte Coalition Company; that has always been the practice with properties operated by Senator Clark and it is also true today with the properties operated by the Pittsmont Company. Putting it in another way, except in so far as the Heinze properties were concerned, there has at all times been among the operators of the Butte District a mutual exchange of such general information as might prove beneficial in the operating; which goes to the extent of furnishing one another with maps, surveys, etc.; so that the practice so far as the Anaconda and the Butte Coalition Company is concerned is no different from that which has generally obtained in the Butte camp, except perhaps with reference to the Heinze properties and the Ballaklava Company. I am familiar with many of the workings dis-



closed in the underground workings made on the Jesse veins, to which my attention has been directly called. I was over the North Butte workings to the depth of the 1600, and the Badger State workings extended into the Badger State claim. The Jesse vein has not been traced on its course or strike westerly through the Badger State claim. I am familiar with the course or strike of the Jesse vein at the most westerly point, where it has been developed. If it continues along the course or strike exposed at this westerly point of development, it would probably go into the Emily or Millview, and into the Poser claim if it passes out of the Badger State. It would cut the Alice property at some point, if it maintains the strike developed at its most northwesterly end, either near the southeast corner of the Valdemere or of the Boston claim. The ore body terminates in the Jesse vein, as you proceed northwesterly along the strike of the vein where it has drifted on over near the east end of the Badger State claim for a distance of nearly 800 feet. The vein is largely on the 1200 where we made the connection with the North Butte workings. The North Butte drove out through the ore body at our request, and it extends into that claim and when the Anaconda Company sunk the Badger State and drove southeasterly it connected with the North Butte workings. There is some ore coming in again of a commercial value in the Badger State mine, so far as developed on the Jesse vein, we think on some of the other levels. The Badger State has prob-

ably shipped a small amount of ore out of the Jesse vein on some of the upper levels, but not on the 1200 where we connected with the Butte, and it was barren. I said it was barren for a distance of 800 feet southeasterly. The Belle of Butte claim lies in Walkerville, south of the Alice. It was a silver producer and was known as belonging to the silver camp; it has been operated for some fifteen or eighteen years in a small way by lessors. The Auroria claim owned by the Boston-Montana is also in that district. It has not produced for years. It may have produced a small amount in the early days.

#### Re-Direct Examination.

In this northwest-southeast series, the ore occurs rather intermittently; that is, there are large shoots of ore with large barren places in them. It occurs both vertically and horizontally, that is to say, you might find it on one level and on the next level below it may pinch out and you won't have it on the next level above. The fact that we do not catch it on the 1200 foot level does not cause us to despair but we go to work and develop it on some of the other levels in the Badger State. We find this vein on the thirteen and eighteen hundred foot levels in the Badger State. We have not yet got the connections definitely through on the 1800 to know that it is the Jesse, but we are pretty sure that we have it. Some of it apparently goes in at depth, and we feel that we have it on the 1800 foot level. We have got commercial ore in the Jesse vein in the Badger State, and this vein has pro-

duced stupendously in the Jesse vein itself. The claim next east of the Jesse is the Tuolumne, and in that claim the Jesse vein is producing heavily. The next claim east of that is the Adelaide, which has been producing as well from the same Jesse vein; and east of that comes the Mountain Chief and Right Bower. Those are the veins which gave rise to the controversy between the Anaconda and the Ballaklava, and the Ballaklava encountered a very good showing on that vein. The vein is not developed east of the Mountain Chief. The Anaconda Company has observed this custom of allowing Senator Clark's engineers freely to go into its workings, and he freely allowing its engineers coming into his, since he was working in the early days in the Colusa Parrot, adjoining the Anaconda claim. Since that time we have had access to his workings, and he has had access to ours. Prior to the sale of the Original and the Colusa Parrot, we had a controversy with Senator Clark, known as an apex controversy. Senator Clark never at any time admitted that there were any merits in our controversy. He was paid five million dollars when he sold out. The purchase price of the Heinze properties was ten and one-half million dollars. In a general way I kept track of the market values of the stocks of these companies. The quoted price on the Anaconda Copper Mining Company now is 38 to 40, at the time of its transfer in 1910 it was quoted at about \$50.00.

#### Re-Cross Examination.

I have been consulted by Mr. Buzzo from time

to time with reference to Alice matters; there being no extensive operations these were only small matters. I never advised Mr. Buzzo or the Alice Company in any way for the benefit of the Anaconda Company or to the detriment of the Alice Company.

Re-Direct Examination.

I have never received any salary or compensation of any character from the Alice Company, my compensation coming from the Anaconda Copper Mining Company.

(Witness excused.)

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[Testimony of Howard J. Buzzo, for Defendants.]

HOWARD E. BUZZO, a witness called on behalf of the defendants, being first duly sworn, testified in substance as follows:

Direct Examination.

My name is Howard E. Buzzo; I testified as a witness for the defendants on an injunction hearing in this case. I am acting Superintendent of the properties formerly owned by the Alice Gold and Silver Mining Company; and have been in such position since the death of my father in September, 1906. My father's name was Thomas W. Buzzo. My father was Superintendent of the Alice Gold and Silver Mining Company from sometime in November, 1894, until the time of his death. During the time of my father's Superintendency I was employed there most of the time as a clerk or in some capacity, electrical worker, or something of that kind for a good many years. Once in a

while I worked underground. I was more or less familiar with the work that was going on while my father was there, because I was his clerk. Before coming to Butte, I had had mining experience in Bingham and Alta, Utah. The water had raised to the one thousand foot level at the time my father and I first came to Butte. My father was never to my knowledge below the one thousand foot level, because they never had the water drained below that point. During the years that I was connected with the Alice Company, I had in the year 1910, and subsequently, become familiar with the ores that were left in the mine that showed in the workings there; and had acquired acquaintance such as would enable me to know and recognize the zinc ores and their character. I do not remember the year that we suspended operations in the Pan-Amalgamation Mill. We used to pump the water, and we used it in the milling operations, but I believe we quit pumping water after we suspended operations in the mill. I believe it was around 1900 or 1901. I do not believe at any time since I have been there at the property, that there ever was any sampling below the zinc, but the four, five and six hundred levels were completely sampled during the month of March, 1910. At that time the water stood between the six and seven hundred foot levels. At that time you could go down nearly to the 700, but you could not reach the ore bodies on account of the water.—I am not sure there was a little variation, —I am not sure where it stood at the time Mr.

Dwelle's sampling was done. We did not sample anything at the 700 at the time this sample was taken, as the cage could not be let down to the 700, and I believe the water had lowered below the 700 at the time this sampling was done, but had raised above the 700 prior to that. As regards the sampling done in 1910, I had charge of the operations, but Mr. J. E. Dwelle of the Empire Zinc Company attended to the sampling, and our foreman directed the main operations and extraction of the zinc ore, which I believe they sent to Canyon City, Colorado. Ten men were employed for a few days. I went down with Mr. Dwelle every day, and I also went around with the Foreman. On these three levels on the zinc ore body every few feet samples were taken across the vein, that is I cannot say just what distance apart these were taken, but they were taken in sections right across from wall to wall. It was a complete sampling. There were other samples taken, but the samples were not as thorough as Mr. Dwelle's. 74 samples were taken by him. I believe I retained a portion of each sample. The samples were sent to the High Ore Assay Office, in charge of Mr. Febles, from the Alice shaft, in two shipments by express wagons, and one of the men who assisted Mr. Dwelle in selecting the samples each time went with the express wagon. Mr. Febles is in charge of the A. C. M. Company's Assay Office at the High Ore Mine. Before Mr. Dwelle's coming there we had furnished quite a tonnage, that is I cannot say how many tons, but for sometime we

had furnished the Montana Zinc Company these zinciferous ores. This company leased the old Pan-Amalgamation Mill and turned it into a concentrator and static separation plant for the treating of the zinc ores. Their daily tonnage was not very great, it was the time they were working on the Alice ores,—in the experimenting stage. They operated, it seems to me, during the years 1904, '05 and '06, but they gave up the Alice ore and got a better grade of ores elsewhere. After that they got their ores from the Lexington, which are of a better grade and coarser zinciferous ore. Most of the ore from the Alice and especially that from the north ledge is very fine grain. The Alice Company extracted those ores and delivered them to the Montana Zinc Company. They delivered a few thousand tons. It was possible to see the zinc ore bodies before this Montana Zinc Company was furnished with ore, and some little cross-cutting had been done and a few carloads had been extracted and shipped to Utah and Colorado. In mining for this zinc in 1904, '05 and '06, ore bodies were disclosed to a greater extent. In the early days they uncovered the zinc ores in many places and left them there because the zinc impaired their milling operations. In the old mining the zinc ores were left there without development. Prior to the obtaining of the Alice ores for the Montana Zinc Company, it was not possible to make any such general and thorough sampling of the Alice zinc ores, as was made by Mr. Dwelle in 1910, because he had the advantages of the larger surfaces



exposed. After the Empire Zinc Company was furnished this ore, we made a shipment of between 900 and 1000 pounds to Beer-Sondheimer Company, of New York. They sent an engineer there, and we furnished him a man, and he took this ore from different points to get a fair sample on the four, five and six hundred levels. I shipped the ore myself by express. We retained a sack of the samples of that shipment taken from each level, because we thought other experimenters would want to try it. Those sacks were regular ore sacks, containing something over 100 pounds each. We kept those sacks in the little store house we had there at the time. We have some of it there today. We took a part of it to Mr. Feble's on a Monday morning, I think it was the fifteenth of June; we took a portion of each of these sacks and kept them separate. I myself delivered the ore to Mr. Febles. Those three samples are representative of the zinc ores on those three levels.

#### Cross Examination.

The man I sent into the mine with the engineer representing Beer-Sondheimer & Company, was Mr. Spitzger, he was an engineer in their employ. I sent another man by the name of McIntyre, he was a mining engineer,—had attended the Montana School of Mines. I think it took them a couple of days to do this sampling, if I remember rightly. I was down in the mine with them but not all the time. I went down and stayed a while, and then went up again and went at my other



duties, and then went back again. Mr. McIntyre knocked down lots of the rock and Spitzger took whatever he wanted. Whether they took the samples from the places I would have taken them or not, I am not able to say. I believe that they did not have to work very hard, because there was a good deal of this ore that was left by the men who took out the shipment for Mr. Dwelle just a short time before that. That is, Dwelle had taken down some considerable of the face, and took out whatever he wanted and then Mr. Spitzger and Mr. McIntyre took what they wanted; that is what they did. I am not a technical graduate mining engineer myself, I never studied at any professional school. I have covered a good many subjects at different times,—done more or less fire assaying; I used to read technical books frequently on different branches of mining and related sciences. I was kind of a clerk to my father attending to affairs in his office mostly, during his lifetime. The character of my work since that time has been making settlements with lessors and keeping the accounts and looked after the operations whatever we had to attend to.

Mr. Feble's office is at the High Ore Mine. He is assayer or chemist for the Anaconda Copper Mining Company. Mr. Febles sampled the work that Mr. Dwelle did there, and he has done sampling for silver and so on for the Alice department for a good many years off and on. Examinations made by Mr. Dwelle was made in the month of March, 1910. The samples were sent to Mr.

Febles' office and there crushed down for assaying and Mr. Febles knows whether duplicates were saved or not. The samples were quite bulky so there was plenty of rock to save, if they wanted to do so. Besides the carload he shipped to be experimented with, Dwelle took out 74 samples containing several pounds each. At that time these samples were all sent to the assay office of the Anaconda Copper Mining Company, and I know they were assayed for I have seen the returns. Of course, I was not present when the assaying was done. I did some assaying in 1902 and '03, just the Alice ores, silver and gold. The assayer at the Lexington and the Montana zinc Company told me that they got better results from the assays of the Lexington ores. I never assayed any Lexington ore myself. What I say of the value of the Lexington ores is hearsay, but I know the character of them by examining them. They are coarser and look easier to treat. I am satisfied that the Lexington ores are of a coarser nature and a little different character than the Alice. I am familiar with the stages of reducing zinc ores, but not an expert. I have seen the static separation of zinc ores in operation. I have seen the Wetheral Separator in operation. When I spoke about the Alice ores being generally fine grain, I mean that if you break a piece of zinc blende from the Alice, it looks like a piece of cast iron, the particles of the zinc, and lead, and iron, are so fine, and apparently so close together, that you have to grind it very evenly to separate them

in any way. Clarence B. Wisner was the man who came west for the Montana Zinc Company, and who represented the New York capitalists. Dr. Morris Eisenberg had more or less to do with the Montana Zinc Company at that time, I understand he promoted it. To my knowledge it was never looked upon seriously in Butte. Mr. Wisner personally had had no experience in the reduction of zinc ores, before he came to Butte. I knew Dr. Eisenberg by sight for a good many years; he was a Jewish Rabbi, and afterwards a kind of a promoter. I could not say whether he had any familiarity with the subject of the reduction of zinc ores. Apparently when silver mining was conducted in the Alice, zinc ores were left where they were encountered because they were not reduced in the silver mill. I could not state how wide the lode is there, including the series of veins, the zone itself I do not know. We have a north vein and what is generally called the south vein, and there is a vein called the Hawkeye vein, which seems to run off easterly from the Rainbow lode. I cannot state whether it was supposed to be a part of the main Rainbow or not. I could not state how much space there is intervening between the north and south vein, the width is varying. There is a good deal of granite intervening. I could not state the total width of the veins. It is considered to be pretty wide, the zinc ore bodies vary in width, from a foot and a half to thirty feet, but as far as the other mineralization is concerned, I have never measured it up. There may

have been besides the zinc ore a few lenses of silver left there, lessors have prospected and found them since. There may have been some copper ores left there, containing a very small fraction of one percent of copper in the gob. There never were any ores left there simply because they contained copper that I know of. All the ore in the Alice contained a very small percentage of copper; about one-tenth to perhaps four-tenths of one per cent. It was not considered of any aid in the Pan-Amalgamation process, but was considered a detriment. I never attempted to make any figures at all myself upon the tonnage on ore in the Alice mine.

#### Re-Direct Examination.

I was down in the mine at different times and saw Mr. McIntyre and Mr. Spitzberg take the samples of which I kept three sacks. I think I would have taken those samples from the same places. It was characteristic ore that was left there in extracting this material for Mr. Dwelle; a copy of what purported to be the analyses of the Dwelle samples was given me and kept on file, and have been amongst the files in the Alice Office since that time. I think they employed upwards of forty men in the Montana Zinc Company plant. Mr. Wisner had his Superintendent named Humphrey and a foreman named Lyman conducting the plant. I believe they claimed to have had former experience in

that line of work. They were milling men and that was their profession.

Re-Cross Examination.

Mr. Dwelle and I worked on these samples and figured,—the figures have been kept on file, he and I worked for the return which he got. I took those samples down to Mr. Febles' office, and if they were assayed at all it was in his office. The assay certificates were given to Mr. Dwelle direct. Duplicates of the original certificates were placed among the files in my office. These duplicates were figures which Mr. Dwelle and I made from Mr. Febles' returns,—that is the returns were given to Mr. Dwelle and he and I made some figures on those returns and those figures were preserved. I did not make a report to any of the stockholders of the results of the Dwelle sampling, and it was before I acquainted Mr. Gillie with what was going on. I do not remember of having apprised anybody else of the results of that investigation whatever. The samples taken by Dwelle were from the six, five and four hundred foot levels, he took some samples on what was called the south vein. He took them in groups from the above levels and from the north vein and the south vein, taking the greater number out of the north vein. I cannot tell you from memory how many of the 74 samples came out of the north vein, but Mr. Dwelles' notes were placed on the map and I made a typewritten list which would show. He and I worked from his notes. Each sample was numbered and the number was

recorded on a map which Mr. Dwelle and I traced, he did most of the work but he and I worked together on it. We traced out a map and it showed where each and every sample was taken. In sacking samples we always give them a number of which we keep a record, which shows where this sample was taken, and Mr. Dwelle did the same thing. It is the usual method of numbering your samples when you send them to an assayer, if you have more than one you number them and you have to rely on your notes. We put down on a map the places from which the various samples came. As every sample was taken, and I saw Mr. Dwelle and helped him take some of them, we made notes where they came from, numbering them as we took them. Mr. Dwelle made the notes and that was the information that enabled me to designate on the map the place from which they came. We sampled a place in the 600 on the north vein about 20 feet wide, on the 600 there is a drift running west, but not very far. As far as we could get in this drift was alongside of any zinc ore that might be there, the chamber that was sampled, however, was a sill floor where zinc ore had been extracted by the Montana Zinc Company, and we sampled across what is known as the back of the level. I do not remember the length of this drift. It was the drift that went west from the crosscut in the north vein. This drift extended from the further end of this chamber that had been made in the extracting of zinc ores, and we could not get very far in it because

it had caved. It may be two or three hundred feet long. You could not get in there very far, because it was caved, and the only way you can tell is to look at the map. The mine maps will tell exactly the length of the drift on the 600 as far as the surveys are extended, and the surveys are being extended while the work is done. I have those mine maps in my possession. I would have to consult the map to see how far east it was extended. It has been many years since that work was done. The drifts on most of those upper levels run pretty nearly the length of the claim with a few exceptions, the length of the claim being 1100 feet. I do not believe the drift on the 500 extends from end to end of the claim, giving the distance would only be guess work on my part. In the case of the 500 level, we got our samples on the north vein, east of the crosscut and for a distance of probably 200 feet or more. The drift on the 500 going east is a lateral drift and it runs partly on one side of the zinc ore body, and then it crosscuts south and runs on the other side, so that we got the samples here across the ore body, and took them from both walls. There are two crosscuts there which we could take clear across. They run alongside the zinc ore body probably 200 feet. There was one stope on the 500 from which we took samples that ran up 35 or 40 feet. As regards the south vein on the 500, we could not get access over a great extent because that is more caved than the north vein. We took out several samples, however. On the 400



we could cover more ground because that was opened up much better. Near the crosscut we covered it at short intervals, for 150 or 200 feet, and west of the crosscut the vein was open quite near to the Moulten end line, within 100 feet; or may be a little over 100 feet that we did not get in there. We found a zinc body in west several hundred feet from the cross cut; in other words we took in two different places there. Between those two points, there was very little zinc exposed, or that could be seen from the old workings. The zinc was probably in back of the side of the level, or the rock which had not been mined out. This was in the drift and the zinc ore body did not show except in one or two places where there was a cross-cut until we got out to this point that came along-side of the drift. Generally that was the way we did the whole sampling. I never went into a mine for the purpose of making a thorough sampling of the mine, nor to determine generally the character of the ore, but I have seen it done. I saw that done in the Jesse on the 1600. I just saw the work being done. I saw them working at that. I was there but had no connection with those who were doing it. I was helping a survey for the Anaconda Copper Mining Company and while I was surveying this sampling was going on. I was just carrying the tape. In taking our samples in the Alice on the 400 level we did not get as far east as we went west. As I stated before there was one bunch of this zinc ore at the side of the 400 level, several hundred feet west of the



crosscut, which while it may have been a part of the continuous body, was not shown up except in the places, between the points where we took it and the crosscut. I do not know just how many feet it was. It was quite a ways over toward the west end line of the Alice that went in with these samples. I should estimate the length between six and seven hundred feet. We did not take any samples on the 300 itself, but east of the crosscut we went up a raise and there was a blind sill or a floor, below the 300 level showing zinc ore and we took samples out of it. There was quite a gob up there, it had been worked out a little. There has been more work done than is shown by the report of 1886, which discloses the following: 1750 feet of drifting on the 400; 1340 on the 500; 1840 on the 600, making about 4000 feet of drifts altogether on those three levels.

#### Re-Direct Examination.

There were good many portions of the levels that I did not get into with Mr. Dwelle. The levels where they worked the silver ore had not been cleaned out. There were a good many places we could get through but we had no object to clean them out as we had in going through to the zinc ore bodies, the larger zinc ore bodies. I do not think there is any question about our getting a fair sample. The bodies shown with few exceptions are very uniform. A lateral drift is a drift which runs parrallel to a ledge generally it is a drift run in the country rock. Mr. Dwelle not only marked on the map from what point the

samples were taken, but he extended his sketches and compass surveys on this tracing from which the blue print, which you have there was taken, showing the condition of the levels, that is to say, the extent of the levels at the time that he took these samples. You have in your hand the blue print made from that tracing. That blue print has been locked in the file of the Alice Office with the other records and papers from that time until it was brought to Helena for this trial.

By MR. EVANS: We ask to introduce this in evidence.

Re-Cross Examination.

Mr. Dwelle has the original tracing sheet but the working map from which he made it we have at the Alice office. He traced the workings for the purpose of taking these blue prints, and from the tracing that he made, this blue print was printed.

MR. WALSH: I object to this, if the Court please, for several reasons, in the first place the original seems to be in the possession of the witness from which the copy was made, and this appears to be a copy of that copy, and we have no evidence at all that the samples were taken from the places indicated on the map.

Re-Direct Examination.

I spoke about the original being an Alice map, that Mr. Dwelle made his tracing from. That map showed the workings of the Alice mine prior to that time, that is the surveys. It was a plan map. There was not indicated on that map the point where Mr. Dwelle took his samples, but he

made a tracing from that map, which gave him a tracing showing the Alice mine workings, and then he put up on the tracing the point where he took his sample and the results of his samples, and from that he made this print.

Re-Cross Examination.

Mr. Dwelle and myself made this blue print as far as I can remember.

MR. WALSH: I object to it on the ground that there is no evidence; Your Honor has no assurance as to the places they were taken.

THE COURT: To some intent it may be competent, it is doubtful; if of no value as evidence the court will reject it in making its findings. Objection overruled.

(Map marked Defendants' Exhibit 2.)

Re-Direct Examination.

To make it clear Mr. Dwelle and I invariably went down together in the morning, and I stayed with him a while until I had to go up and attend to other duties, and then I came down again; I cannot remember how many times a day it was, but I knew what was going on all the time and where he was working. I would see him at these various places and in fact some of them I helped him.

(Witness excused.)

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[Testimony of John C. Febles, for Defendants.]

JOHN C. FEBLES, a witness called in behalf of the defendants, being first duly sworn, testified in substance as follows:

My name is John C. Febles; I live in Butte, Montana; I am chief assayer and chemist for the Anaconda Copper Mining Company, and in charge of that department for the Anaconda Company. I am a graduate of the Colorado School of Mines. I had five years' experience with the American Smelting & Refining Company, before coming to Montana, and have been ten years in the employ of the Anaconda Copper Mining Company in that capacity. I have been engaged in analyzing and assaying copper ores of Butte and other ores that occur in Butte and Montana generally; there is a laboratory in Butte there that I am in charge of. Mr. Howard Buzzo who has just been on the stand, delivered three samples of ore to me about the 16th of June, this year; they were numbered 4, 5 and 6., Those three were the only samples that Mr. Buzzo brought me on that day. I examined the samples as to the character of the ore they contained, and then I crushed the samples at the suggestion of Mr. Bruce of the Butte and Superior and after having crushed the samples, I cut out the proper amount for assay and analysis, and turned the balance of the samples over to Mr. Bruce. Mr. Bruce came to my office and examined the samples before I did anything with them. The samples were crushed in an ordinary rock crusher, and was transferred to a coarse grinder and ground so as to pass through a twenty mesh sieve, then carefully rolled, and the sample for assay was cut out with a cutting box, such as we call a riffle, the reject of that riffle was returned

to the original container and properly marked and returned to Mr. Bruce. That is the most accepted method in modern practice to get a fair sample of ore. I made a composite sample of portions of the three for assays. I then weighed equal amounts of the well mixed pulp and combined the three portions in equal amounts, and then carefully rolled that so as to make a uniform mixture out of it. Each was analyzed for the same metal values. I have a memorandum in my pocket which contains those results I cannot give it from memory. I made this memorandum from the results as I got them from the assays. Sample marked No. 4, the results were iron 11 per cent, manganese 1.12, copper trace, silver 3.9 ounces, gold .04 of an ounce, lead 5.7 zinc 14.1, insoluble 46.36 per cent. Ordinarily the insoluble would be called silica. The insoluble residue from a sample is usually taken as the silicate content of that ore. The chemical formula for that is  $\text{SiO}_2$ . No. 5, iron 8.6 per cent, manganese .84 of one per cent, copper trace, silver 2.3 ounces per ton, gold .02 of an ounce per ton, lead 7.58 per cent, zinc 13.5 per cent, insoluble residue 51.6 per cent. No. 6, is 11.3 iron, .96 of one per cent manganese, trace of copper, 3.5 ounces of silver per ton, .02 of an ounce of gold per ton, 7.8 per cent lead, 14.3 per cent zinc, and 44.18 per cent silica. On the composite sample the results are 10.6 per cent iron, manganese .98 of one per cent copper trace, silver 3.25 ounces per ton, gold .03 of an ounce per ton, lead 7.5 per cent, zinc 14 per cent, silica

47.22 per cent. Mr. Bruce whom I referred to returned the results of his concentration test to me, and I analyzed them, giving Mr. Bruce the results of the analysis; so that Mr. Bruce as a result of my analysis had what these products contained before him. My observation of these samples before analyzing was that they were what we would call a zinc lead ore and quite silicious and the mineral contents were intimately mixed. I mean that it would require very fine grinding or separation to separate and lessen the zinc and lead particles from each other and from the silica content in the ore.

In March, 1910, in my laboratory, I analyzed some samples for Mr. J. E. Dwelle of the Empire Zinc Company. I analyzed 74 samples. I have the results of those samples with the numbers of the samples designated on them, as given me by Mr. Dwelle. If I recollect clearly, those samples were delivered to me by Mr. Alex McIntyre, who was assisting Mr. Dwelle, at the time he made this examination of the Alice property. I think they were brought over in a light wagon. I have in writing a list of the results of these samples.

MR. EVANS: They are all there, so I will offer this list.

#### Cross Examination.

I do not know anything about these samples, except that I was told by Mr. Dwelle that he would be sending those samples to me by Mr. McIntyre, that is all I know about where they came from.

MR. WALSH: I object to the introduction of

this, if the Court please, on the ground that it is incompetent.

THE COURT: I will allow them in at this time; if not competent the court will reject it. Objection overruled, and exception noted if desired.

MR. EVANS: I will ask to have this marked.

(Marked Defendants' Exhibit 3.)

I have made a general arithmetical average of the 74 samples, which is as follows: Copper .081 of one per cent, silver 4.105 ounces per ton, gold .03827 ounces per ton, zinc 10.64 per cent, lead 5.847 of one per cent and silica 49.91 of one per cent.

THE COURT: Of course, not much could be drawn from that, while this is an average of your 74 samples, there is nothing there to indicate that the ore was there in that average.

(Whereupon said defendants' exhibit 3 was received in evidence, and is in the words and figures following, to-wit:)

Alice Samples Made for J. E. Dwelle,—In Mch. 1910.

Anaconda Copper Mining Company.

General Assay Office

Certificate of Assay.

Butte, Montana, June 16, 1914.

Mr. J. E. Dwelle.

Date: 3/19/10.

Lot	No.	Per Cent Ozs. Sil.		Ozs. Gold		% Zn.	% Pb.	Wet. \$02.	% Insol.
		Copper	Per Ton	Per Ton					
1		no	4.00			0.90	Tr	73.20	
2		0.10	6.56			8.30	3.60	59.00	

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3	Tr	2.00		9.20	4.20	58.20
4	Tr	6.00		14.30	8.10	43.00
5	0.10	13.92	0.16	11.00	7.00	41.20
6	0.30	13.92	0.20	17.20	7.20	41.20
7	0.10	7.60		10.20	6.00	52.20
8	no	4.00		6.20	2.20	61.80
9	0.15	4.00		9.60	6.10	55.20
10	0.30	6.80		14.60	9.40	41.40
11	0.20	3.20		15.50	8.10	43.60
12	0.10	2.40		8.60	5.40	49.20
13	no	2.16		3.40	0.80	56.60
14	Tr	4.40		6.80	2.80	58.00
15	no	2.00		5.30	1.00	54.60
16	0.15	4.00		7.60	4.40	44.80
17	0.10	5.44		8.80	3.80	57.60
18	Tr	2.20		4.90	2.20	63.00
19	no	2.60		3.40	0.80	71.00
20	0.30	4.80		9.80	4.30	48.60
21	0.25	4.72		14.40	11.90	40.40
22	0.35	12.00	0.20	18.20	13.20	25.80
23	0.20	8.60		13.10	11.00	37.00
24	0.20	15.28	0.22	10.00	7.90	44.60
25	no	3.20		5.50	3.60	43.20
Date: 3/22/10.						
26	Tr	3.90		6.50	3.20	57.20
27	Tr	3.00		5.30	1.00	68.20
28	Tr	3.00		16.30	10.00	40.90
29	Tr	3.20		12.00	7.60	50.00
30	0.10	5.00		13.10	9.40	40.20
31	Tr	3.40		10.20	4.70	42.10
32	no	3.40		7.80	4.40	56.00
33	Tr	3.50		8.10	14.90	41.20
34	0.10	6.00		20.30	8.00	43.50



35	0.50	7.84		20.90	10.20	29.40
36	Tr	3.54		26.90	10.80	26.30
37	no	7.60		21.00	8.10	41.70
38	0.20	8.40		18.90	10.30	45.60
39	no	3.52		16.00	9.20	37.80
40	Tr	4.40		14.00	9.00	38.20
41	no	2.20		3.80	0.90	53.20
42	no	4.00		7.50	3.80	46.40
43	no	3.20		5.90	0.70	52.20
44	no	0.60		3.70	1.00	70.40
45	Tr	4.60		5.60	1.10	59.10
46	no	0.80		0.80	Tr	83.60
47	0.10	3.36		8.00	1.30	52.60
48	0.20	11.04	0.08	10.30	12.60	31.70
49	0.05	5.36		9.40	18.40	38.70
50	Tr	3.80		13.10	5.10	55.90
501	Tr	2.48		15.00	6.70	47.00
502	0.10	3.80		13.40	8.40	40.40
503	0.05	3.28		15.00	9.00	39.40
504	0.10	3.84		12.30	7.40	48.80
505	0.05	3.12		6.20	1.50	72.80
506	0.10	1.12		9.10	2.70	51.60
507	0.05	1.12		7.50	3.80	56.20
508	0.15	1.68		9.00	5.60	45.40
509	Tr	1.68		10.50	3.40	58.00
510	Tr	0.92		14.60	5.20	45.40
511	Tr	0.92		2.00	Trace	65.40
512	0.10	8.80		15.80	12.20	37.70
513	no	0.88		3.00	6.60	65.80
514	Tr	6.60		8.90	4.60	54.20
515	0.15	1.24		18.20	10.20	35.00
516	0.15	2.84		13.30	7.00	44.40
517	0.20	4.56		8.30	3.80	50.90

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601	0.15	2.28	16.10	8.80	35.40
602	0.10	1.88	16.10	9.20	49.20
603	0.15	2.20	12.90	7.40	50.40
604	Tr	4.60	8.80	2.00	66.50
605	0.25	4.60	16.80	8.20	36.40
606	Tr	1.80	7.60	4.80	62.60
607	no	3.00	7.00	3.50	68.00

Average of 74 samples:

0.081 4.105 0.03827 10.64 5.847 49.91

J. C. FEBLES, Assayer.

(Witness excused.)

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[Testimony of Reno H. Sales, for Defendants.]

RENO H. SALES, a witness called on behalf of the defendants, being first duly sworn, testified in substance as follows:

Direct Examination:

My name in full is Reno H. Sales. I reside at Butte, Montana. I am a mining engineer and geologist, employed by the Anaconda Copper Mining Company. I was first educated at the State College at Bozeman and afterwards went to Columbia University in '98, and graduated there in 1900, with mining engineering degree; in 1900, Summer of 1900, I went to Butte, and entered the employ of the Boston and Montana Company as engineer, and about November 1901, I went into the geological department under Mr. Winchell, and I continued as assistant geologist under Winchell until June first, 1901, at which time Mr. Winchell left the employ of the Anaconda Company, and from that time until the present I have been

the geologist for the Anaconda Company. Most of my time I have devoted to that, although I have spent considerable time making examinations on property in the State of Montana, Idaho, well, most of the northwestern states. In my experience in the Butte district I have become familiar with the geological and vein conditions in the Butte camp and district. I have examined nearly every property in Butte in considerable detail. I am acquainted only in a general way with the surface conditions of the Alice property. I was only in the property once; I think it was on the five and six hundred foot levels, but I am acquainted with the properties adjoining the Alice on the east and south and southeast. I am acquainted with the Poser, Elm Orlu and Black Rock properties and the other properties lying to the east and south of those. Well, I am acquainted with the vein in the Rainbow Lode. The Black Rock vein, the one that is being operated by the Butte and Superior Company and the Poser Company, is generally presumed to be the eastern continuation of the Rainbow lode. By the Poser Company I mean the Elm Orlu Mining Company. I am quite well acquainted with the different systems of veins in the Butte camp, the old east and west aplite veins and the northwest and southeast series, and the northern Rainbow we have just spoken of. Taking the Rainbow lode, from the presence of copper in that vein such as shown and the general geological characteristics of the lode or veins, I should consider it a possibility but a

very remote probability of there being commercial copper ore in the Rainbow lode. I do not know of any thing geological, or anything any other way that would indicate the probability of its containing copper at depth. I think the general tendency of the developments in that section up there is rather towards the opposite. I should be surprised to have commercial copper developed in any quantity. I do not know of any ore bodies of any commercial magnitude or commercial extent in value in the Poser claim. The Poser was worked through what they call the Poser shaft. I think that shaft is about 500 feet deep, and my knowledge is hearsay, however, that they did mine some copper ore in the upper levels, but the shaft was never sunk any deeper, and the only developments in the Poser outside of these shallow developments have been made from the Elm Orlu shaft. The Elm Orlu shaft, which is now about 1700 feet deep, has worked out westerly into the Poser claim on the 500 foot level, on the 1000 and on the 1500; the 500, I believe, connects with some of these older workings in the Poser shaft by raise, although I am not certain of that; that is my general impression. Those are the only workings I know of beneath the Poser claim, and westerly from the Elm Orlu shaft these workings were made in part on the Elm Orlu vein; that is the recognized zinc producing vein in that section; they drifted westerly on this vein on the 500, also on the 1000, and started westerly on the various other levels, I think the 13, and pos-

sibly the 9. I am not sure of the other level, but they did not go very far, the ore became poor. I have not seen the copper vein or ore bodies that have been mined in the Elm Orlu. I have been down in those workings, and I have seen evidence of mining there, and I know about where they got their copper ore, but the ore bodies were rather small, and the only places I recall now are stopes there that were said to be copper stopes, but I don't believe I ever had a good look at a copper vein up there, although I did see some copper once. I should consider they were of minor importance; of course, they are worth stoping. I don't know of any zinc veins in Butte that have improved, especially with depth. I don't believe there is any merit in depth. There might be possibly for some little distance below the surface. The upper levels are usually leached out of zinc the first few hundred feet or so, and the developments so far show that below two or three hundred feet the zinc ores begin, and I don't know that there has been any improvement in zinc in depth, but at times the ore body may get larger or smaller. Zinc ore bodies are being mined in the Black Rock at least above the 700 foot level, although they get pretty good looking ore even as high as the 400. I should say they have mined these zinc ores in the Black Rock at least 50 feet in places, possibly more. If copper ore is found in the Alice claim in bodies of importance, it would be very much of a guess in what veins it probably would be found in. Of course, the Blue vein system has

proved to be copper bearing toward the northwest, but I don't know as there is any more chance of finding it in the Blue vein than any other, so far as you can tell by the development. By the Blue vein I mean the northwest and southeast series. Well, I think possibly the vein we call the Emily is the most northerly of the Blue vein pointing toward the Alice ground. That is the first one that has been referred to here in the evidence. It dips to the north. That has been developed northwesterly, with reference to the Emily claim or the Pilot claim, by Badger workings to about the west end line of the Pilot claim and has also been intersected by the workings from the Elm Orlu. There are some places on the Emily claim beneath the surface of the Emily. There are stopes beneath the surface of the Emily. Going westerly on that vein, it has been drifted on westerly for 300 or 400 feet beyond the stopes on the 13 and two hundred or three hundred feet on the 16, and likewise two hundred feet or more on the 1800 foot level, beyond the limits of the stopes. As to the veins on these workings westerly, the vein continues, but it has no ore. I think possibly it continues just as strong as it is down to the east. From the place where you find the stopes in the Emily, comparing it to that place, it gets smaller. In the Elm Orlu it is split up into two veins. Beneath the surface of the Emily or Pilot claim, the vein going west is always narrower of course where it hasn't any ore. It gets narrower, but it is a strong vein. Where the ore is there is

a width of five to twenty-five feet to the vein. On the 1300 it is about four feet, and on the 1600 eight or ten feet, and on the 1800 perhaps a little smaller, eight feet. In the Elm Orlu that condition is beneath the surface of the Emily or Pilot or both. Well, on the 1500 of the Elm Orlu they have a crosscut running diagonally to the southwest, and it naturally cuts part of the northwest veins which come up through that country. There is no direct connection between the Elm Orlu workings and the Badger workings. It is a matter of correlating from the Badger to the Elm Orlu. The Elm Orlu workings show a vein in what I believe to be two branches. They are small and don't carry any values. Where the ore is in the Emily and Badger they don't look promising. That is the most westerly point that I know of. The next northwest and southeast vein of any importance going southerly is the Jesse vein. The Jesse vein is known down easterly to some distance east of the Ballaklava shaft. That is down in the Mountain Chief Claim, and from that point it has been developed more or less up northwesterly through the Badger mine. The Jesse is what we call a strong fault vein in which the ore occurs in bodies or shoots. Toward the east in the Jesse and in the Mountain Chief claims, some of these ore shoots were worked up to the surface, and in fact some of the ore in the Mountain Chief came up to cross shoots; there is good ore right there at the surface tunnel, and we have mined in the Mountain Chief and Right Bower. We have

mined this ore body more or less continuously down to the lower levels and the same is practically true of the Jesse, where they mined to a considerable distance above the 400, I should say, perhaps, 300 feet from the surface and they have mined it from there down to the 22, I believe. Those are the only ore shoots that have been developed of any importance in the Jesse. Between the Mountain Chief and the Jesse claim there is the Tuolumne people who have also mined the shoot, but that is a slanting shoot. That dips more or less from one party's ground to another, and more northwesterly from the North Butte workings. It has been developed by the 1200 foot level of the North Butte or Speculator mine, and for some distance up to the northwest by the Badger workings northwesterly, and it has also been intersected by a good many crosscuts, and by some drifting in the Badger mine but there has been no ore developed at all west of the North Butte workings. As to the North Butte workings, I cannot fix a point exactly how far they extend westerly. Guessing roughly, I should say at least 200 feet west of the Gem end line on their crosscut. The most westerly point in the Jesse vein where ore has been found is in the vicinity of the Gem west end line. That is where the Big North Butte stopes ended. Nothing has been found west of that. The North Butte workings disclose that on this Jesse vein, their highest grade ore came from practically the 1000 down to the 16 and below, well, 16 and 18; below the 18 they have



drifted on the 2000 to the 2200, and the ore shoot is much shorter and of lower grade, and on the 24 to the 26 and 28 they have not done any work on the Jesse. It never appeared to be worth while working on. The 2800 foot level is the deepest North Butte working on the vein. It did not show any ore, and they have not drifted upon it. West of the west end line of the Gem, the developments on the Jesse vein are not nearly as promising. It has been very disappointing. I refer particularly to the work from the Badger shaft. The Corry exhibit number one going to the westerly there through the Badger State does not show the position I have always given the Jesse. It is considerably to the south. The position there as shown by Mr. Corry is considerably to the south of the position of the vein as I found it on the ground. If it continues in its course, it would enter the Valdemere claim at some point south of the letter "r" in the word Reef Fraction—the east end of the Valdemere—in the northeast corner, possibly seventy-five or a hundred feet south of the northeast corner. The next vein of importance that I know there, the northwest and southeast vein is known as the Edith May. The Edith May vein has shown a large ore shoot in the North Butte workings and extended westerly to the vicinity of the west end line of the Miners Union Claim; southeasterly the Edith May has been somewhat of a disappointment. We had an ore shoot near the Modoc shaft, and it was not very long, and it was rather a flat ore shoot. It never amounted to

much, although we did take a good deal of ore out of it. Going northwesterly, the Edith May has been developed in the Badger mine on the 1300, 1600 and 1800 foot levels. There is a body of ore there which has been worked on these levels, although the actual ore shoot as we call it becomes rather poor going west. In fact, while the North Butte Company worked their ore shoots from one end to the other the Badger State has not been able to do so. There is a part of what we call the ore shoot that is of very low grade and has not been mined. It is not of commercial grade. There has also been intersected by workings from the Badger on the 13, 16 and 18 in a westerly direction, where drifts had been extended out there toward the position of the Moose shaft, and westerly from the Badger shaft. It does not show any ore in any of those workings. The most westerly place that developments have shown ore on the Edith May is in the vicinity of the Badger shaft,—slightly south of west in the Badger shaft—rather west of south, I mean of the Badger shaft. The best ore of the North Butte Company in mining the Edith May vein on the dip of the vein was like that in the case of the Jesse. It was the best from the upper levels, perhaps from the 100 to the 1800, though they mined below that, but it has not been of as good a grade. In fact it was of doubtful grade on their 2200. They have done some work on it down there below those levels and mined some ore on it, but it is not as good as it was above. I don't know exactly how much of

that ore has come from the Edith May, but there is ore there. As to the condition of the Edith May vein in its developments from the Badger State shaft, and particularly westerly from the section of the Badger State shaft as to giving favorable promise of occurrences to the west, the unfavorable condition is that the ore shoots themselves are beginning to fail in copper. While you find the ore shoots there, the ore is the same as in the other veins. Instead of being a copper ore, it is going to be an ore made up of zinc, quartz and iron. The copper is failing going to the west. I mean the mineralization. No, they are not commercial. I don't know just what would be the best term. You could call it a mineral shoot or a shoot of mineral deposited in the vein. I have made a general observation on all of these veins, that as you go outward from the main copper area you get into veins which are more zincy; that is, there is a transition from one end to the other. Starting in the Alice country, both the northwest veins or the blue vein system and the old Anaconda copper systems consist of the silver vein minerals, manganese, quartz and iron. That is practically all, and then when you get into that district it does not make any difference whether you are mining a northwest vein or east and west, the mineralogical character is very similar. The east and west veins are distinct copper bearing and you find the northwest and southeast the same. Going down in the copper producing area, you get the same conditions, relating to the cop-

per district, the veins have similar mineralogical conditions. There have been a number of veins developed in the Corra mine pointing towards the Alice ground. In fact, several of the northwest veins come together in that section, and considerable development has been done on these Corra veins out to the west, particularly on the 1000 foot level and 1400 foot level; that was done by the Corra-Rock Island people, I believe, and these developments to the west showed no ore. I think the 1400 ran out possibly seven or eight hundred feet west of the known ore bodies, and the 1000 also ran out a considerable distance, possibly 500 feet, although I am not sure of the amount, but it showed no ore. The nearest point to the Alice ground where any ore was developed would be the Edith May, made in the Badger claim. The nearest one south of that would be the vein in the Corra section, which would be possibly 2000 feet from the Alice ground. These northwest southeast veins, are faulted at times. In mining through the Badger State shaft most of the ore was obtained from the Badger vein, and that is the vein referred to shown as Badger vein upon the map called Weed 1. That vein we contend belongs to the Anaconda or the old vein system, because it is intersected and faulted by the blue veins. These northwest and southeast veins intersect and fault that vein where they are encountered. That vein has been developed to the west on the 1300, 1600 and 1800. They all show the vein continuing, but the ore values play out.

The developments in that vein as you go toward the Alice ground are not promising. In fact, they are very disappointing. It was the first vein different from the blue system that we find the copper ore in, and it was certainly disappointing to find it playing out. The Badger vein dips to the north in the upper levels, and changes and dips to the south in the lower levels. As to whether if that vein continued on its strike westerly from the last point, it would go into the Magna Charta or Magnolia,—there are some of the claims here, the Curry or Midnight, Alice, Millsite; It has a curved strike. It strikes northwesterly going easterly from the Badger claim and nearly east and west around the Badger shaft and turned around to a southwesterly strike going to the southwest. I do not think there is any other vein that I know of in the country there of any importance that would have any substantial bearing on the value of the Alice ground. I think I have described all that might have any bearing on the Alice ground. I do not know of any vein that points on its strike to the Alice ground from the east or southeast or the general easterly direction or that side that gives promise or looks favorable to the finding of ores beneath the Alice surface. I do not know of anything coming in from the other side, the Silver claim side, that would have any particular bearing on the Alice. They are simply veins which are regarded as silver veins, the same as all that country up there. I don't know anything of any particular importance.

Outside of the low grade zinc ores that have been referred to repeatedly I know of nothing in the Alice ground or any of it that would give it any tangible value, that you could give it as a mining engineer, except a remote probability or possibility of copper. It really hasn't any great importance. I could not as an engineer place a value on it. It is purely speculative; very much so. No, I am not familiar with metallurgy enough so as to have an idea of the value of the zinc ores in the Alice. In my history of that section of the country, or taken in its entirety, there is nothing that I can suggest that existed in 1910 prior to the first day of June, that would make that an unfavorable time to sell the Alice property. Mr. Weed referred yesterday to having been limited in the extent of ground he was permitted to visit in the Badger State. It came about in this way. We were making some arrangement for mutual inspection in the Badger State and Elm Orlu mines, and the understanding was on our first talk that we should have full access to the Elm Orlu mine, but it was questionable of course, just how much ground the Clark people would care to cover in inspecting our ground. My conversation was with Mr. Joseph Pyle, who was representing the Clark interests. He is Senator Clark's chief engineer, I believe, and he came to my office, I believe, with Mr. Gillie. I am not sure, and we took out our maps and showed him all of the workings in that section; that included everything leading from the Badger State in all directions, and con-

necting with the mines to the south, and Pyle was not limited in any way whatsoever. He was asked to mark a map, or mark out his boundaries, of whatever ground he wished to see and he did so, and we made a map covering those workings and it was delivered to him. There was no limit on how much ground he could see. That has always been our policy with outside companies. This map was what the directions to the foreman were based upon. The foreman at the mines do not let outsiders through without directions from somebody as to where he can go. That particular map, exhibit number 1 Weed, was made to accompany the paper I prepared for the American Institute of Mining Engineers. This particular map was made to show the structural relations between the veins and fault fissures in the Butte district, as far as they were sufficiently known to be placed on the map. The Jesse vein branches in the Badger State, going westerly. I don't know as I could really say which is the original portion. It is divided into two or three branches, and they all look more or less alike, but none of these branches look as strong as the combined branches to the southeast.

#### Cross Examination:

The Badger State vein is marked here in black and printed on here "Badger vein." That corner No. 1 is a different scale. It will not fit on that map. I cannot very well place the Badger vein there. Of course, it is difficult to put a vein from this map on to the other, because there are no points

of reference. The only thing on this map is the Magna Charta and the Valdemere and the Magnolia, which have been placed on there by someone else, and I don't know if they are correct. I don't know whether or not those claims were put on there by reference to points on my own map. I can draw it on with reference to this claim on this map. (Witness complies). That particular vein has been developed I should say a thousand feet; that is very rough. I am just trying to recall a map. We crosscut it too from the Badger State shaft, and then drift easterly and westerly, not very far easterly from the shaft, most of that is towards the west. The Corry No. 1 map has the Badger State already marked there I think its a little further north from that mark, but that is substantially correct. We crosscut this Badger vein possibly three or four hundred feet on the upper levels and not so much on the lower levels. The Badger vein is developed in a crosscut on the 1000 in a drift on the 1200, and in drifts on the 13, 16, 18 and 20. Those are not all substantially a thousand feet in length; the bottom level is shorter; the others are substantially the same, that is, the 13, not the 10. When I commenced to develop that vein it must have been somewhere along 1907 or 8; somewhere along there, and have been at it ever since. I won't say that more than half of the ore taken out of the Badger State since 1907 has been taken from this Badger State vein; some of it came from the Edith May and some from the



Emily vein, but not more than half of it. None of it came from the Jesse. Mr. Gillie is my superior officer. Of course, I confer with him constantly, and the testimony disclosed that I made reports to the New York office once a week or thereabouts. I don't make reports. I don't know how it is that Mr. Gillie did not happen to say anything at all about the vein in the Badger State claim. I don't know how it came about that Mr. Ryan believes we take ore out of the Jesse in the Badger State. We are down approximately 700 feet in the Moose. We began that work possibly in the past year and a half. I am not sure just what time. We have done nothing that I know of about sinking. There has been no cross-cutting from the Moose. That work was not done on my advice. The Moose is for an air shaft. That is my understanding. I don't know of any work being done in the Moose. There is an air shaft constructed at nearly each of the mines. That is a very common thing to have an air shaft absolutely separate used for air only. We have hoists on those. There are lots of veins that could be conveniently explored from a shaft sunk there,—any one of them within easy reach of the Moose shaft. That would not be very far from the Rainbow Lode and pretty close to the Badger State, and the Edith May. Those veins have been pretty well explored already. The Edith May has been cut in these lateral workings leading up to the Moose shaft, within a few hundred feet. It has been cut in these workings leading to the Moose

shaft on the 13, 16 and 1800 foot levels. Those levels run partly on the Badger vein and partly on the country rock, leading out to the Moose shaft. These veins are cut in these workings. The workings are run as they intersect the veins, and they alternately strike and intersect these veins. The Jesse vein is open to probably within 500 feet of the Alice ground and the Edith May much closer than that. The workings pursue practically the course that I have shown the Badger State vein to take on the map, Exhibit Corry 1. I have mine maps showing the progress of the work from time to time. I haven't any authority to produce any maps, but I have a map showing just exactly where the workings in all that region are. No drifting has been done from the Moose shaft since the last work was started in the Moose shaft; not since the sinking was started. The Emily is the most northerly vein known in this section, that is, in this neighborhood, that intersects us. That has been extensively worked. It has been drifted upon by the Badger State mine to about the west end line of the Pilot claim. That is in the neighborhood of the Mill View,—corresponding to the east end line of the Mill View. There is developed on the 1500 Poser a vein which I believe to be a continuation of this vein. It dips to the north. There is a controversy between our company and the Pilot Butte about that. They contend that the apex of that vein is within their own ground. Of course, they contend that the Emily vein

is just where we say it is, except that they have a vein <sup>coming</sup> ~~coming~~ down into the Emily. It is a question of where the apex of those ore bodies is. The Emily was worked for copper and silver ore. No, I cannot give you anywhere near the exact figures that it produced. It had a good ore shoot in it. It has been mined possibly 400 feet over the strike, or less than that, possibly 250 feet. We have been working it two or three years. I know where the Amy Silversmith is located. I don't know whether it is being worked or not. I don't know anything about it. I ~~think~~ <sup>think</sup> there are some lessors working on the Goldsmith, but I don't know anything about that. The Jesse vein is worked most easterly in the Mountain Chief and Ballaklava. The vein there is worked in the Ballaklava between 2500 and 3000 feet. That would be from the vicinity of the west line of the Gem, where the North Butte ore body occurs, to where the Ballaklava people are working in the Ballaklava mine. It is just worked where it has ore. Well, about 1200 feet would cover most all of the producing part of the vein. On the 1200 foot level it is almost continuously worked from there to the Tuolumne and North Butte to the west end of the North Butte workings. In some levels it continues and some levels it does not. I am not sure from what vein the North Butte vein in recent years has been coming. I could not give you any definite information about that; it has been coming, a great deal of it, from what they call the Snow Ball vein, and

also a vein they call the Adirondack. Up to within recent years I don't believe there has been a pound of ore mined from the Jesse. The quantity was there, but the quality was not; that is, low grade ore was there. It never has improved. The Adirondack vein belongs to the Blue system, the Snow Ball is rather doubtful. Its strike is about half way between the strike of the east and west veins, and the northwest and southeast veins. The Adirondack I presume takes its name from the Adirondack claim. It is difficult to say what the difference is between the northwest southeast veins and the east and west veins, but the fact that they intersect and displace the older veins merely shows that they are of a later age. That is all. They are of later formation. Down towards the east end of these blue series of veins, the northwest southeast series of veins, you get copper in abundance in some of them. Now, these same veins are also shown in the workings of the East Butte Company and none of them are productive down there. I don't recall any other place besides the Butte camp in which ore is mined that contains two metals in conjunction, that are mined together. I have never heard of any rule with respect to the occurrence of the relative abundance of these metals, wherever they are found in depth, as to which one predominates in depth. I have never heard of any rule that has been established by any geologist or anyone who knew anything about it.

## Re-Cross Examination:

This map, Weed 1, represents, of course, a horizontal plane through the Butte District. As a matter of fact, the surface is very irregular, so that any horizontal plane would not show the same depth at all points. That particular elevation, 4600, corresponds to a general average depth of about 1500, although it varies a great deal; some places it is 1100 feet, and some places nearer 1600. In the northeast country in the vicinity of the Badger, the general dip is to the north, especially in the upper portions; going southerly or southwesterly, some of them are nearly vertical and to the southwest they have an average dip to the southwest. The northwesterly extremity of the veins as they approach the Alice, most all dip to the north, but the Edith May dips to the south in the lower levels. The dip is not very marked except the Edith May dips about 75. In 1500 feet, if it continued that would make a difference, but it changes to the south in depth. My map does not depict substantially the apex of the veins. If the apex were projected to the surface, or if my lines were projected to the surface, depending on the dip of the vein, it would occupy very much the same position. When I speak of the course of the Jesse vein, I gave its position at its westerly extremity, considerably to the north of where it is depicted on the map by Mr. Corry. I referred to the surface indications. The position of the Jesse vein on the map, Corry one, is not where I should draw it—if that is intended to be the apex.

The workings in the Badger State cut the Jesse vein on the 200 foot level and the 1000, that is, within the Badger claim. I should say it is possibly 150 or 200 feet northeast of the Badger shaft where we crosscut it. The point or points in the Badger State claim where we cut the Jesse vein is shown on these various levels easterly and northeasterly from the shaft, and it is also exposed along the surface in the various shafts, cuts and trenches. As I recall it, the most westerly underground working cutting the Jesse vein, is on the 1300 level, a crosscut north, a considerable distance west from the Badger shaft. That point I should say is under the Auroria, although I am not sure of that. It is pretty well to the west in the Auroria. It crosscuts north. We cut the Jesse vein from the workings on the Badger State vein. It is pretty hard to remember these various workings. This drift is driven westerly on the Badger vein on the 1300, and at some point along here there is a little crosscut cutting the Jesse vein coming up here. The Badger state vein would bring you into the Auroria. Some of our workings follow the vein. It is from these workings we make the crosscut to the Jesse, and the vein we crosscut to is to the north of the Badger State. The crosscut comes out from the 1300 Badger and strikes the Badger vein and runs westerly; whether this is the exact position on that level I don't know.

Re-Direct Examination:

The Jesse vein is cut in the 1500 Poser. This

map, Exhibit 1 Corry, I think correctly shows the position of the Edith May vein where I know it. I think that is approximately right. I suppose the geologists all have theories of these vein systems, which formed first, the east and west, that is, the zinc and copper. It is rather a difficult problem to say whether the zinc or copper was formed first. My general belief is that the deposition of mineral, both copper and zinc was going on more or less at the same time, by the composition of veins, as they were being formed in different parts of the district. Now, investigation carried on seemed to indicate for instance the chalcocite is later than the zinc minerals in many of the veins that have been examined and studied, but on the whole there is no indication that a zinc vein was formed and later a copper vein came along and cut through it, or the other way. There is no indication that the copper vein was formed and later zinc veins were formed. It is rather a difficult problem. As to any theory why nature was so lavish in zinc around the Rainbow and copper down below, that is along the same lines. It is really a very difficult problem to tell, where you have several vein systems, more or less intersecting with a period of mineralization continuing while these fissures are being formed, and you get a very complicated mineralogical condition.

(Witness excused.)

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[Testimony of John Gillie, for Defendants.]

JOHN GILLIE, a witness called on behalf of the

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defendants, being first duly sworn, testified in substance as follows:

Direct Examination.

I know the history of the sinking of the Moose shaft on the Moose claim and why the sinking or raising of it was done and decided upon at that point. The Moose shaft was originally a prospect shaft sunk about thirty years ago. I think it is on the Auroria claim, or very close to the line, instead of being on the Moose; it was a small prospect shaft, and two veins were worked there, one north of the shaft dipping to the north, and one to the south, for shallow distances or depths; along about 1902 or 3 some parties, Malcolm Gillis and others, got a lease on this Moose claim, and sunk this shaft to the 300, continued it from its depth, and also made the shaft in pretty good working shape. They drifted on these veins both north and south of the shaft, on the two and three hundred, without any great valuable results to themselves or to the company, further than showing that there were two veins there; the company put in a diamond drill after they ceased this work, and from the station of this shaft at the 300, at an investment of about forty-five thousand dollars, put it in both ways, and cut these veins at greater depth; they did not show very much better there, and that shaft was abandoned. I believe it was sunk to the five and more crosscuts made, but, however, there were no great quantities of ore extracted from that shaft, and it was abandoned and unused for twelve years anyhow. About two



years ago, as our workings on the Badger State commenced to extend westerly at some considerable distance, we had no connection that way, and we needed ventilation; this shaft is well situated for that purpose, and was already some depth. We started in, put a plant on it and sank it, and continued to do sinking and raising from the lower workings, even at the present time, so that the work was resumed on that shaft as a ventilation shaft. We put it down so it could be used for mining operations, if we had to, but it is put down for ventilation purposes. It is well known by everybody that our ventilation system in connection with our mining is a large part of our expense; for instance, we work a shaft on the west end of the Gagnon, which is sunk 2300 feet, for ventilation alone, and never hoisted a pound of ore through it. The total electric hoisting power used by the Anaconda Company is 35,000 horse power. Ten to twelve thousand horse power is used in connection with our ventilation work, driving fans and so forth. Costs are increasing all the time, due to great depth, the heat from the oxidation of the ore in the timber, which gets greater as we go deeper; it is harder to ventilate; our supplies are costing more; one of our greatest supplies, powder, costs ten to twelve per cent more than a few years ago, our timbers costing thirty per cent more, and the expenses all down the line have increased, and our wages increase as our price in copper increases. Heat and lack of ventilation has almost everything to do with our

labor efficiency, because as we pass through the mines observing the men at work, if you get into a close place, why you can readily understand why a man cannot do a day's work. We will be making a forced connection often, and the air for a time will be in very bad shape, and you can see at once that the efficiency is very low, and that maintains even with our best ventilating system; men cannot do the work, and you cannot expect it of them, that they could do on the surface or at shallow depths. I am familiar with the developments in the Badger claim and that vicinity. On the whole, I would say the Badger State is favorable. We never expected to find a copper mine of the extent of the Badger there, and then again you might say it is disappointing for the reason that the big veins have not produced what we have found in similar veins that have produced considerable ore. The history of the development of the Badger State is,—in 1903, a crosscut was started north from the Diamond shaft, and run over 2000 feet across that country, and clean across the Badger State shaft; this was put down to the 1800 level, and a connection made with that before we started to do any development or mining on the veins. We have come up in that shaft. Since that time we have crosscut on the 10, 13, 16, 18, 20, and recently we have cut the vein on the 22, but it is quite recently, within a few days or a few weeks. It is quite disappointing even in the known ore veins, such as the Badger State, which has produced a large portion of the ore; there are

two veins on that property, the Emily and the Badger, that have produced the large amount of ore that has come from the Badger State mine; the Jesse vein, before we started any work, even the crosscut I spoke of from the Diamond, had been worked by the North Butte Company on the 12 and 1600 west, to their west line and to our east line under arrangement about paying for the work. We got them to drive on the 1200 westerly into our ground a few hundred feet, hoping that the ore would come in again. I had forgotten to state that they followed very good ore nearly to their line, within a few feet of their line, on the northwest corner of the Jesse and into the corner of the Gem line, there was a large strong vein, and the ore very good. The few hundred feet they ran in our ground under the arrangement to pay for the work did not show very good results. The vein was large but the ore too low to be economically valuable or merchantable, and after we got the Badger State shaft down we ran a drift out and connected with the work where they left off, for ventilation purposes. It is 1700 feet long, connecting with the North Butte, and we have never taken a pound out. The Jesse vein has been opened in the Badger State at several levels, and it is non-productive in every one of them. The Edith May while not on the Badger State claim, only in its westerly extension, has produced some ore, but it is not as productive as it was in the North Butte ground. In fact, the westerly workings are of no value. The ores were of no value

in either the Edith May or Jesse. Taking all of the development westerly of the plane of the Badger State shaft, well it has been on the whole disappointing. Of course, it has been favorable to the extent that we have gotten some considerable ore out of two other veins that we did not know of,—the Badger State and the Emily. All of them, even those veins, are playing out in places as you go westerly. The veins themselves continue. Taking the veins that point towards or from any of the Alice ground, I would say they are very unfavorable going westerly towards the Alice ground, of finding ore in the Alice ground. There is nothing on any of them that would indicate to me the probability of their carrying ore in the Alice ground, except that there are productive veins in the country that continue on. There is a possibility but not a probability. I could not, as an engineer, place any value on the Alice ground because of that condition, because those veins are pointing in that direction, having in mind the developments which are upon the veins. Down to the 10 I was familiar with the underground workings of the Alice in the early days, and probably the 1200. I have been quite familiar with the upper workings; have known the ground pretty intimately since '81. The only information that I have that the ground was worked below the 1000 is that there was one small shoot of ore that they did find some ore on the 10 that extended to the 13. It was so small that it was hardly payable ore. In

fact, the Alice mine has never been worked below the 10, other than development work. It was fairly well developed to the 1500. In view of the developments already on the Alice ground and its mining history, and because of its position on the Rainbow lode alone, being in the vicinity of producing mines, I would say they operate very much adversely to it. If there were no developments on the Alice and the Rainbow lode was undeveloped, and the Rainbow lode on it, it would have a greater value than its value today. As to the history of the dividends of the Alice Company, the larger portion of that was paid in the first fourteen years. 1880 to 1894, although some dividends were paid in '98, the total dividends amounting to one million and seventy-five thousand dollars. For the years 1910, 11, 12, and 13, the Anaconda Company has paid about forty millions of dollars, nearly equivalent to ten dollars a share on the thirty thousand shares of Anaconda the Alice Company owns, \$300,000.00. There was forty millions paid in that period, and had the Alice accepted this proposition, they would have been doing better in four years than they did in any other period of its history, even in 1880, so far as returns are concerned. As to testing and trying to find out if anything could be done with those zinc ores, since its acquisition by Mr. Ryan, it has been examined at numerous times. I told before about Mr. Dwelle. Mr. Dwelle was from the Empire. He was an engineer, a Colorado engineer, from Denver, connected with the Empire Zinc

Company,—I don't know whether definitely or continuously retained, but he went out on examinations for them, I know at numerous times. He appeared in about March, 1910, in Butte, came to my office and said that he was representing the Empire Zinc Company and wished to examine the Alice property. I referred the matter to Mr. Ryan and got a telegram from him to afford Mr. Dwelle every opportunity and facility for examination of the property. That examination he started and it covered a period of perhaps ten days or longer, and it was made pretty thoroughly, because I knew Mr. Dwelle to be an engineer of standing, and knew he had a number of men engaged on it, and he worked pretty faithfully on it. I requested that he leave with me a copy of his results, and I also asked for his report, and he said he could hardly do that, but he would give me a map and the assays that were made by him at our office, and he furnished a map that accompanied his report, and this map was traced from our Alice mine map with the additions of some work that he put on himself with a compass, and the markings of the numbers of his assays. From Mr. Dwelle's results as put upon this map I made what I regarded an average of his results and which would be practical for mining purposes for anybody mining that zinc ore, for the reason that it was continually coming up. The excitement and the big zinc deposits in Butte seemed to spread and many engineers visited there and would ask for an analysis of the ore, and this analysis I had pre-

pared from the best information I could get, and it is such that I know would represent a considerably large tonnage that I know could be found developed on the Alice properties at that time. I base that statement upon my knowledge of these ores. I call it the average analysis of Alice ores from the 600 up. Of course, this does not mean clean to surface, for it is practically mined out for a couple of hundred feet, but the 600 up, say at the 200, zinc 11.2, lead 5.6, iron 10.2, copper 4/10, insoluble 45.2. These are all percentages; ounces of silver per ton 5.5; ounces of gold per ton .02 or forty cents. The expenditure of money made by the Butte and Superior experimenting on zinc ores ran into large amounts,—very large amounts, hundred of thousands of dollars. To take hold of the Alice ore you would have to go through somewhat the same processes. There is no process so far as we can ascertain that will treat those ores. If I was going to develop the Alice ground as an independent proposition, I could give an idea of the maximum amount to be expended to explore for these ore bodies, off. I have not figured on it, but I would start in and say that a hoist and compressor plant and pumping plant would cost you from one hundred to one hundred and seventy-five thousand dollars; to unwater the mine would cost you at least fifty thousand dollars, and perhaps a great deal more if the shaft should be found to be in bad repair, as we know portions of it are. This latter figure of fifty thousand dollars I place on as close an estimate

as I could in making one recently for the La France properties or the Lexington, similar workings to the Alice, and water standing to the same level, and it cost more than fifty thousand dollars to de-water it, and the Alice would take as much. Before the Alice would be ready to do any work, you would be in the neighborhood of two hundred thousand dollars. Then you could start in on your mining work, depending on the amount of development you would do. The reasonable cost of that is ten to twelve and a half a foot, depending on the kind of ground. If you sank a shaft it would cost you one hundred dollars per linear foot. I knew that Montana Zinc mill, the Wisner mill that was operating on the Alice very well. I was up there every week or two while the thing was operating, because I was very much interested in it. It was a new feature in milling and reducing ores in Butte, and they had some novel machines there. I saw enough of it so that I could state that it was an apparently intelligent, serious attempt to solve those ores. They had the modern machines, the electrostatic machine, and from the amounts of money they spent it was an earnest attempt to work out the problem of reducing those ores. On the strike of the veins as they run through there, they are about a couple of thousand feet in the Lexington properties. With reference to the copper veins to the south or east, compared to the Alice and the probabilities of striking them, they are a little closer to the copper producing area, with some large veins tending or



striking in their direction. There has been commercial copper ore mined from the Lexington mine itself in small quantities. There was an attempt made with a zinc process on the Lexington ores in late years by the Heinze interest, the LaFrance Company. The result of that was they put up a large mill, a mill that would cost, equipped, seventy-five or one hundred thousand dollars. They had many different kinds of machines in there, and apparently the mill was as up to date as anyone knew how. It was a failure,—the reducing of the ores. In my connection with the mining business, I have become reasonably familiar with the manner in which copper has been sold during the last twenty years. A few hundred pounds of copper sold to the local foundries would represent the sale or consumption here, running back prior to '99, the time of the Amalgamated's acquisition in Montana. Practically all of the copper used in Montana comes here in a manufactured form—wire and brass. As to how copper is sold, it is usually delivered at the customer's request. If he has a warehouse or a factory, it is delivered at his point of use. If copper is sold to a man in London it means delivery either in London or South Hampton, and the delivery is at the expense of the seller. Of course, in order to compete, you have to keep stocks at different points. If a customer came in and you could not deliver it to him at once he would be forced to go elsewhere, with the result that the large concerns keep copper for delivery at foreign

points. For a company like the Amalgamated Copper Company it has been practicable only in a small way to sell its copper direct to the consumers or direct in the market. They spoke of the Parrott Company. It sold some of its copper direct to Mr. Farrell, who originally owned the Ansonia Brass Works, and he bought copper from the Bridgeport refinery, and they did get copper direct. Mr. Farrell was president and one of the largest owners, and the way Senator Clark works, he uses some of his own copper and purchases on the outside. Outside of those two concerns none of the other companies can sell and dispose of copper themselves as a general business proposition. If they had the copper they might be able to make the sales themselves, but not as a business proposition. The Amalgamated Companies, outside of the Parrott at the time of the Amalgamated Company's formation in '99 generally sold through the United Metal Sellings Company owned by the Lewisohn Brothers, the predecessors of the United Metal Sellings Company. The Lewisohn Brothers had a selling agency, subsequently conducted by the Selling Company. The Anaconda Company during that period sold through some of those agencies. There have been two companies, the Calumet and Hecla, that have always sold all of their own copper, the Lake Michigan copper and the Phelps-Dodge people sell their own copper. The Calumet and Hecla sell for various lake concerns, and also Phelps-Dodge. As to the acquisition by the Amalgamated of these prop-

erties, I don't think it could affect competition between them as to the producing and selling of copper for the reason that it never controlled enough copper, even if it was disposed to. They were selling through agencies even at that time. Every mine has an end, and in order to prolong the life of a mining company it is necessary to acquire additional property. That would be the first thing. Since 1899 the Amalgamated Copper Company has been mining ore at the rate of about eight to ten thousand tons a day, and for the last seven or eight years we have been mining at the rate of thirteen to fourteen thousand tons a day. As to the comparison between the depletion and the acquisition of ore deposits since 1899, in the amount of copper they would control, well, no, they haven't added as much in the way of ore reserves as they have exhausted during that period. I don't know what extent of ownership they have in the International. I am afraid the Amalgamated has not kept pace with its production. It has exhausted its resources so far as its metals produced are concerned. The International has a copper plant at Tooele. It has a custom plant. The International has no mines. The copper produced there amounts to a million pounds a month or less. Some of them are custom ores. The coppers are turned back to the account of the miner or producer. I do not know what the rule of the International is. I know in the case of the North Butte, it is turned back to them.

Cross Examination:

As to whether Mr. Ryan, the Butte Coalition Company, the Alice Company or the Anaconda Company has ever done anything themselves towards experimenting with the Alice ores for the purpose of devising a process or system under which they could be profitably worked,—so far as the Alice is concerned, give them time. The original owners had to have twenty-five years, and they did not do any experimenting, even after you got the wonderful results told about by Mr. Walker. In turning that property into the Anaconda Company, the Anaconda Company, Mr. Ryan and anyone connected with it have done the fair thing to the people concerned, and it riles me to hear the testimony introduced here by some of the witnesses. Look at the earnings for the Alice Company on the thirty thousand shares of Anaconda stock as compared to anything done by them in the last twenty-five years. They did something in this way, that everybody who came forward and asked an opportunity to examine, sample or have samples forwarded to them, have been given every facility. We did not mention here the Beers-Sondheimer Company. We shipped about ten tons of ore to Germany for them, and afterwards, we made a shipment to Germany at their request. No, we did not spend any money in endeavoring to develop a process by which the ores could be profitably worked, but we could have developed the property if we had

owned it uninterruptedly or we had been allowed to go on there through the Badger State shaft. We could have gone up there, and we could have drained the ground and could have developed that ground at great depth at less than we could have from the surface, but upon this legal controversy, the Anaconda Company could not spend that money for that purpose, so that whatever purpose we did have has been interrupted by these proceedings. We have stopped work to the extent of going north from the Badger State. We have not stopped because we never started, but that was our plan originally, owning the Alice ground, or after it was acquired. However, since Mr. Ryan became interested in the property, whatever may have been the reason, we have not conducted any operations ourselves for the purpose of testing these ores, but we have given anyone who wished to, the opportunity. The Butte and Superior has been spending thousands of dollars for the purpose of perfecting a process, and they have much more amenable ore. Senator Clark has been ~~spending~~<sup>spending</sup> thousands of dollars in the construction of mills and so forth to develop the Elm Orlu ores. The building of the concentrator by Senator Clark is now in operation. It is about completed. I could not say what it cost Senator Clark, perhaps a half a million dollars, and I believe that is for the purpose of working the ores from these two claims; principally, I think he expects to do a custom work—custom business. We are very well satisfied that we know what is above

water level. I have been in the mine and taken samples, but we have not made any thorough sampling of it. Considering the market value of metals, the gross value in the ore as shown by my average of the assays,—well I gave you 14.2 per cent zinc; that is 284 pounds, at five cents a pound is \$14.20. That is what I understand you want. 5.6 per cent lead is 112 pounds per ton at four cents, \$4.48;  $\frac{4}{10}$  of a per cent copper is 8 pounds to the ton, at 15 cents is \$1.20; perhaps that is a little high. It is not that high. We will count it  $12\frac{1}{2}$  and call it a dollar;  $5\frac{1}{2}$  ounces of silver at 56 cents an ounce is \$3.10;  $\frac{2}{100}$  of an ounce in gold at \$20.00 an ounce is forty cents. That sums up gross \$23.18. These figures from which this average was worked out are the figures that were given me by Mr. Dwelle, that is, some of them, and I think possibly I used some other figures, but principally Mr. Dwelle's. There has been some elements of increase in the cost of mining in the Butte camp, owing to the increased depth and that kind of thing. As to the final result due to recent economies, such as electric power and such things, it is probably at a standstill, or even up with say seven or eight years ago. We make annual reports on the costs, some of the comparative costs. No, I don't think our annual reports show a steady diminution in the cost of mining per ton. The officer immediately over me is Mr. C. F. Kelley, vice president of the company and Mr. Thayer President of the company. I don't remember that my attention has ever been called to this

reference to the Moose shaft in the annual report of the company for the year ending December 31, 1912, introduced in evidence. This shaft can also eventually be connected with the Badger State workings, and will be of great assistance in perfecting ventilation, and you remember what I stated, that we were sinking and raising that shaft. We are out there on those lower levels. We are making raises to prospect those veins. The prospecting was incidental. If we did not need the shaft for ventilation we would not put it down. No, we haven't connected the Moose shaft with the Badger State workings. We are underneath it at several points. At two or three of the levels, the 18 and 13 is way out from where the Moose would come down we are making raises there. We sank from the top and suspended operations on top for a time. We are down about 900 feet now. We have the vein opened up down there, and we are making the raises through for the reason that we take the waste the other way and use it in the slopes of the Badger State mine; so that we are really at a depth of about 1800 feet below the collar of the Moose shaft. Those are the Badger State workings, referred to as not showing very well on the veins out there. It has been two or three years since we started sinking this Moose shaft. Two or three years is not a good long time to work on a ventilation shaft. Our Gagnon shaft took us nearly three years to sink 2300 feet. We have not had any ventilation through the Moose shaft. We have forced ventilation by

means of fans. The Jesse has produced practically no ore at all in the Badger State. Perhaps when I testified about that before we were in the dark about it at that time. I don't remember what I testified to, but I know this much that where the Jesse goes off to the northwest lying in just the position that the Badger—it is pretty hard to tell in which vein you are in—the Jesse goes to the northwest and the Badger to the west. That condition may have made us believe when I was testifying before that I thought we were working in the Jesse, but we knew even then that there were long distances of unproductiveness. As to the production of the Badger and Emily, we were not developed very completely at that time. We had ore from the Emily at that time.

Q. I want to read your testimony to you, as it appears upon pages 165 and 166: "Q. Mr. Gillie, you say that the ores occur rather intermittently in this Blue vein series—in this blue vein series—the northwest and southeast series? A. Yes, sir, intermittently, such as that there are large chutes of ore, and with large barren places in them. Q. And this barrenness, does it occur only upon the strike, or does it occur upon the dip as well? A. Both vertically and horizontally. Q. That is to say, you may find it on one level, and on the next level below it may pinch out, and you won't have it on the next level above? A. Yes, sir. Q. So because you do not catch it on the twelve hundred foot level, you do not despair, but you go to work and develop it on some of the other levels of the



Badger State? A. Yes, sir. Q. What other levels do you find it on on the Badger State? A. On the thirteen and eighteen; we have not yet got connections definitely through on the eighteen to know that it is the Jesse, but we are pretty sure that we have it. Q. And it apparently comes in at depth? A. Some of it. Q. And you feel that you have it on the eighteen hundred foot level? A. Yes, sir. Q. You have got apparently commercial ore in the Jesse vein in the Badger State? A. Yes, sir, we have."

A. That is what I refer to there; you could hardly identify the difference between that on the

Q. It is a question as to the identity of the veins then. What you spoke of as the Jesse vein at that time you now think it is the Emily or Badger?

A. If it is a productive vein it is a portion of the Badger vein,—anything that produces there.

As to the development on the Badger State being disappointing, and as to our hopes or expectations about the matter, well, of course, on the start they have been equal to what we expected; that is, they have been on the whole a great success, and will produce probably a great deal of money, but after we had been working there for a considerable time, and opened up two of those very profitable veins, which we thought would go to depth, why, they don't show well in the lower levels, so it has been a disappointment in that way. I stated it was a success as a whole, but it was a disappointment later. Well, I hardly expected at one time

that it was going to be one of the greatest producers of the camp, but I thought it was going to be a good mine, and it is. It will show a large profit. We expected to get any veins that are within the claim. Well, in the beginning we crosscut on the 1800 and we cut some ore there, enough to warrant us in sinking that shaft. We cut at least three or four veins attached to the property, three veins principally, two of which showed very well. At least down to 1913 we were altogether satisfied with the results of our work in the Badger State, and we are really satisfied with our work on it yet. Of course, we have been disappointed in some of the veins. I asked Mr. Dwelle for the report made by him to his company after his examination of the Alice. I said to him in this way: We were pretty familiar ourselves with the Alice property, and as he was going to make the examination on the outside, an independent source, that I would like to have his conclusions, his report. He said he would, and gave us his map containing the assay. He stated he could not give us his report he was making to his employers; that he was working for other people. They do not do any business with the Empire Zinc Company in the West. I hardly think they do in the East. The only report we got from the Beers-Sondheimer engineer was in conversation. I do not know where the New York office of the Empire Zinc Company is. The Beers-Sondheimer is at 42 Broadway. This Dwelle examination on the blue print which has been

marked as an exhibit here, is a table which purports to give the assay value of the samples. The first at the head of the list shows zinc 9/10 of one per cent, lead a trace, and silver 4 ounces. This is waste, and we don't consider that. I have Mr. Dwelle's information from himself that that is wall rock taken for his own information. An ordinary miner ought to know enough not to send that up. The appearance of that would not indicate that it is ore. Referring now to sample No. 446, showing 8/10 of one per cent of zinc, a trace of lead and 8/10 of an ounce of silver; that is very low grade. It may be a horse in the vein, extending from its position. In endeavoring to sample a mine for the purpose of determining what the value of the ore in it is, you would very naturally be expected to sample that kind of stuff that would be left in the mine, because you could not tell what was waste and what was not waste on mere inspection. You need not use it however, if found in such a portion of the vein known as wall rock or a horse in the vein. You need not use it in your conclusion. I did not consider all that long list in my average. This long list was averaged by Mr. Febles excepting number one, I think was omitted, but I used the samples that in talking with Dwelle and agreed with him would be a fair average of it. I did not average all of them. Mr. Dwelle had three or four samples that he would consider would be very representative of the property and we did it together from analyses that I gave you yesterday. It is different

from the average as given by Mr. Febles. That is, it is slightly different. Now looking over these samples, they are indicative of almost any vein, and you must remember that these are taken in streaks of the veins. These widths, as represented here, don't represent the whole vein; for instance, he says thirty inches; one place may be good ore, and then he takes three feet, another sample in the same vein. They would widely vary. They might widely vary in the different streaks. I spoke about the LaFrance property—the Lexington. I don't think there was ever any injunction issued, but they were operating a dry mill process there, electrostatic process, dry crushing, and they were causing a lot of dust in that vicinity, which was floating out in the atmosphere, and they were threatened with proceedings I think it was about ready to suspend anyhow. The predecessors of the Anaconda Copper Mining Company I know in 1883 and 4 sold its ore in Swanzee, unrefined and untreated. It was sold as crude ore, but about their copper prior to 1899, I don't know definitely. That matter was handled by Mr. Haggin about those times, in the East; I don't remember. Prior to that time I don't think there was any selling relation between the Anaconda Company and the Boston and Montana Company, but there was some with the Parrot Company. I know there was matte treated back and forth at different times. Well, I don't know whether there were selling agencies for these various companies prior to that time when the various companies put

their product on the market and sold it, but I know the Parrot handled its own product. It was presumably getting the best price it could for its copper, which would be natural, and each was endeavoring to get the business. There was competition between these companies prior to 1899 to the extent that the Boston and Montana and Butte and Boston were selling through one concern. The Anaconda Company was selling somewhere else. You might call that, inasmuch as there were two concerns, that there was competition. They may have occupied the same position as two drygoods stores on the opposite side of Main Street in Butte would.

Re-Direct Examination:

Well, the company producing the copper, when it places it in the hands of a selling agent, the agent has exclusive control over it, and the producer cannot order it sold at any time at his will. It rests at his will. However, the agent must in nearly all of the contracts, advance up to eighty-five per cent of its value to the producer in funds, and the selling agency then holds the copper until sold, and then is reimbursed. On Mr. Dwelle's map here, I could, or an engineer or anybody acquainted with the map could tell where the samples were taken. It purports to show where they were taken and the widths too. If you take the scale of the map and see the width of a certain drift, you can get the lines very closely. The Wisner plant operated at least a year and a half, when it was destroyed by fire. Since the forma-

tion of the Amalgamated in 1899, I do not know of any copper property, now a big producer that was sold to outside and independent parties by the organizers or directors of the Amalgamated Copper Company, or any of them; in other words, property that was not brought into the Amalgamated, but owned by them and controlled by them and sold to independent interests. I don't remember of any property that Mr. Rogers was interested in or that he controlled that since that time has been sold to outside interests. Mr. Rogers and Mr. A. C. Burrage, a director of the Amalgamated, controlled the Chino, and that was controlled by them since the time of the formation of the Amalgamated and sold by them to the Guggenheims,—Haden-Stone interests. The Guggenheims are the American Smelting and Refining people. It has no connection in business; it is an independent concern. The production of the Chino last year was a little more than fifty-three million pounds. The property was formerly known as the Santa Rita. The name of the corporation now is the Chino Consolidated Copper Company. That was sold by Mr. Rogers and Mr. Burrage, or the corporation they controlled, since the formation of the Amalgamated Copper Company, along about 1904, 1905 or 1906. Somewhere in that neighborhood. That mine is in Grant county, New Mexico, near Silver City. I can give the average price of copper per year from 1899 down to the present time, including 1899. The source of my information is considered authentic.

It is the same figures that settlements are based upon, the Engineering and Mining Journal. I will state that in 1899 and prior to that, the price of lake copper was the controlling market figure, and electrolytic was not usually quoted, as an ordinary price; after that they quoted both electrolytic, because electrolytic was coming largely into the market. The Butte District produces electrolytic altogether. For 1899 the quotation I have is lake, and the sale price of electrolytic was from  $\frac{1}{8}$  to  $\frac{1}{4}$  cent a pound below that. In 1899 lake copper quotation—the average price was 17.61 cents. I will give it by years. 1900,—now I will give electrolytic,—1900 it was 16.19; 1901, 16.117; 1902, 11.626; these are cents per pound. 1903, 13.235; 1904, 12.823; 1905, 15.59; 1906, 19.278; 1907, 20.004; 1908, 13.208; 1909, 12.981; 1910, 12.783; 1911, 12.376; 1912, 16.341; 1913, 15.269.

#### Re-Cross Examination.

There has been a large foreign increase in the demand for copper in all these years, and a continuous increase, both foreign and domestic. I went down there in 1898 or 9 to examine the Chino at the request of Mr. Burrage and also became interested, inasmuch as I put up some money and got some stock of a company that was going to take over the Chino properties; the development down there hung fire for a long time, and it looked like a dead one, you might say, and they made an offer for the stock and everybody sold out. It was a producing property in 1899. I could not say how much it was producing in that year. I



could not tell you exactly, but it has been producing for perhaps two hundred years. It is one of the old Mexican properties. The source of my information about Mr. Rogers being interested in that property was my conversation with Mr. Rogers, Mr. Daly and Mr. Burrage. I don't know under what name the Chino was organized, but it was about 1906 or 7. Prior to that time it was known as the Santa Rita Copper Company. In 1899 it was not producing very largely. It was producing in 1899 by lessors largely, when I was on the ground. It really was not very much of a factor in the copper world at that time. Mexico has never been a very heavy producer of copper until recently. In production it occupied no rank whatever with the Butte properties at that time—the Boston and Montana or the Anaconda. Lessors were operating when I went down there. I suppose a good many more lessors were operating on it than on the Alice. Several hundreds were operating down there at that time.

Q. I notice the following in the Copper Hand Book for 1910 and 11: "The mine has made a small production for the test mill and shipped the concentrates to the new mill. The Chino should be a producer before the end of 1911." Apparently it was not producing at that time?

A. No, not producing, but they were acquiring lands and millsites; I know prior to 1911 it took them considerable time to strip some of the ground, to strip the ore and build the mill; only last year it did become a large producer.



I cannot give you the figures of the Butte production for 1913 or the Montana production. I have not got them with me. I thought you had the advance circular from the government. It would give it there very closely, if you have it there. I don't know whether anybody has a file of that here in Helena. It is very little more than our own production. I can approximate it.

Re-Direct Examination:

The Santa Rita produced during the operations of the Santa Rita Mining Company, the company which Mr. Rogers was in. Mr. Thayer and Mr. Risk were two of the lessees on the property. After 1899 at the time of the sale, Mr. Burrage was in charge of the Santa Rita Company. Mr. Thayer was manager there. In the first place he had a lease on the property from the Whitney Estate that had the ownership. That was about 1898 and 1899 it was turned over. They sold the option, and Mr. Thayer's people sold to Mr. Daly, Mr. Burrage and Mr. Rogers. Afterwards Mr. Thayer was put in charge of the property, about 1901 or 2 or 3, and had a lease with Mr. Risk on a portion of it, in addition to looking after the other leases. The big production now is from low grade porphyry or disseminated ores. Mr. Thayer and Mr. Risk put up a small mill, a very limited one; there was no large mill until the Chino Company completed one recently. There was a mill there for this porphyry ore. The Mr. Thayer I speak of is the President of the Anaconda Copper Mining Company.

Re-Cross Examination:

The porphyry producers have practically all been developed since 1899. The Nevada Consolidated is another of the Guggenheim properties. They have always been considerable producers, but not as large as they have been in the last couple of years. They really control and sell more copper, it is so reported, than any other concern for the last two years.

Re-Direct Examination.

There has been a pretty steady ratio in the increase from year to year in the demand for copper. I have not got the percentage that has been put in. It has been put usually nine or ten per cent. The ratio of increase for copper used has been going along at about ten per cent for the last few years, that is, annually. That is based upon the amount consumed. The consumption has been increasing at about ten per cent annually. It is more nearly nine than eight per cent.

(Witness excused.)

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[Testimony of **Albert C. Burrage**, for Defendants.]

THEREUPON the deposition of **ALBERT C. BURRAGE**, theretofore taken at the instance of the complainants, was introduced and read in evidence by the defendants, and is as follows, to-wit:

THE WITNESS: My name is **Albert C. Burrage**; I live in **Hanson**, **Plymouth County**, **Massachusetts**; by profession I am a lawyer; I have not been in active practice for fourteen or fifteen years. I was concerned in the organization of

the Amalgamated Copper Company; I was not one of its original directors; I became a director shortly after its organization, and am still a director; have remained continuously on the board since its organization. Upon its organization, the Amalgamated Copper Company became the owner of large interests in the stock of the Anaconda, Washoe, Parrot and Colorado Smelting & Mining Company, and, I think, control; I do not recall now from whom the stock came directly to the Amalgamated. I don't think it was acquired from one or more of the gentlemen who had engaged in the organization of the Amalgamated. The purpose of the formation of the Amalgamated was to acquire interests in any company or properties which its directors or stockholders saw fit to make a purchase of. I have no doubt that it was the purpose to acquire these stocks and these companies which it did acquire immediately upon its organization, among others, perhaps. The purpose of the company was undoubtedly to acquire those interests. The Amalgamated was not organized to and it did not thereafter go out into the general market to pick up these stocks wherever it might find them in the market after it was organized. I could not say whether those gentlemen who were interested in the organization of the Amalgamated conducted a purchasing campaign prior to that time for the purpose of acquiring the interests which were subsequently transferred. The company was organized to purchase, under its charter, if I remember rightly,

any shares of mining property that it saw fit. I don't know that the Amalgamated Company went out into the market to purchase shares after that. It undoubtedly did acquire shares afterwards in some companies, but I don't think it engaged generally in the business of buying shares or properties. When the Amalgamated was organized it was undoubtedly known that it would be able to acquire the interests which it did immediately acquire thereupon. I don't know by whom those stocks which were en bloc transferred were held. I was associated with Mr. Henry H. Rogers, primarily, in the organization of the Amalgamated. There was a temporary organization by the office people in New Jersey, and some from my own office, and those individuals were almost immediately succeeded, if I remember rightly, by the permanent board of directors, and that board I think I can recall, was Henry H. Rogers, Marcus Daly, William Rockefeller, Roswell P. Flower, James Stillman, Robert Bacon, Frederick P. Olcott and myself. I do not recall who the incorporators were. I have no doubt they were the men you name, Charles Burrage, Charles N. King and Edwin T. Rice, but I have forgotten. Mr. William Rockefeller was also associated with me in the negotiations which led to the organization of the Amalgamated; Mr. Lawson was also connected with the matter; Mr. Lawson's connection with the matter was more or less discussion between him and myself in regard to the matter, on account of certain interests which he had already acquired

himself individually in Butte. I don't know that Mr. Lawson conferred with anyone else but myself; I conferred with Mr. Rogers; I undoubtedly had interviews with Mr. Rockefeller. I was not charged with any work looking to the acquisition of the stock which eventually was transferred to the Amalgamated upon its organization. I was not in the employ of anyone or under contract with anyone. I went to Butte in the early part of the summer of 1898; I had never been there before. I was asked to go there to get an idea of the value of the Butte & Boston mining property. I was there a few days and went underground in the Butte & Boston mine. I then came to New York and talked the matter over with Mr. Rogers, at whose request I had gone to Butte from San Francisco where I had been for some time. That was the first matter in connection with it. I don't know that you would care to go into details, but at that time I came to the conclusion on my visit to Butte that the Butte & Boston property was not of great value, that it was engaged in litigation which would be very bothersome. I did get a very high opinion of the value of the mines on Butte Hill, and I stated to Mr. Rogers upon my return to New York that it was a splendid field for investment, in my judgment, and that I hoped the matter would strike him as it had me. Mr. Rogers had made a loan upon some shares of Butte & Boston stock, and his request for me to go to Butte was to ascertain as to the value of those shares. Mr. Rogers was inter-

ested in what I said about Butte, and said he might be willing to consider going into the matter further, and if I had any plan or suggestion to go ahead and formulate it. I think that was all. I said that I would like to go out there again and study the situation more carefully. I think I went out the following January. I may have gone there once in between; it is a long time ago, and my recollection is not very clear, but I remember going out there in January and staying for three or four weeks, and taking with me letters of introduction to Mr. Marcus Daly, which Mr. Rogers had obtained for me in New York. I then spent some time examining the Anaconda properties. I had no engineers with me; it was simply a general business investigation. I then went back to New York and reported to Mr. Rogers that I thought it was a very interesting field, that the Anaconda mine was one of large value. That was practically all at that time. I am not sure as to the date when we acquired some Butte & Boston shares,—quite an amount. When I say “we” I mean Mr. Rogers, Mr. William Rockefeller and myself; Mr. Rogers handled the matter, and I think that I had nothing to do with it here in my own office. Subsequently there were negotiations in New York concerning the various Anaconda properties, but I did not participate in them. I don’t recall where those were with Mr. Daly or Mr. Haggin or both; I don’t recall who the individuals were. Subsequently I knew that it was determined to form a company to take over such

properties as were desired, and I knew the matter was discussed between Mr. Rogers and myself and undoubtedly by him with others, and as a result the Amalgamated Copper Company was organized in 1899, in the Spring. I went, on my original visit to Butte in June, 1898, only in connection with the Butte & Boston. Subsequently, in 1899, I went over the Anaconda properties, the Washoe, and some gold mines. The Diamondville and the Belt, and went over to the Anaconda smelting works, and I think there were some other local stores there, the Hennessy Mercantile Company and the Blackfoot Milling Company property, which I did not visit, but which went along, and likewise the Butte, Anaconda & Pacific Railway Company, which I think was owned by the Anaconda. I think I undoubtedly inquired about other properties in Butte, because I was trying to get all the information I could bearing upon those properties, and that would necessarily require investigating what I could of the other properties, but I was trying to recall whether I went into any other properties at that time. I might have gone into some of the Boston & Montana, but I am not sure. I went into the Parrot when I was there in June, 1898; I did not make an examination of the property, but just went in to see the vein. I am sure I did not go to either the smelter or mines of the Colorado Company. It is pretty hard to recall what properties became the subject of consideration between us in connection with the project that was then under consideration, but I know I



discussed the Butte & Boston, the Anaconda, and the Washoe, and I am sure I discussed the Parrot and the Boston & Montana; I do not recall any others. I do remember that I did not go into the Colorado and that I did not see any of the people there connected with it, but I made no investigation of it there at all. My recollection is that Mr. Leonard Lewisohn of New York had that property; either bought shares or had an option; at any rate, it was under his control, but it was unknown to me physically at that time. I think the Colorado Company was the subject of consideration by us later; that is, before the incorporation of the Amalgamated. The litigation pending at that time involving the Butte & Boston, was the Heinze litigation. The corporations mentioned did not go into the Amalgamated; there were only certain interests in them, as I recall. The Amalgamated acquired a certain amount of stocks of these particular companies; whether it acquired a controlling interest in each of these that we have spoken of, depends on what you say we have spoken of. It acquired no interest in the Butte & Boston or the Boston & Montana, and we have spoken of those. Those we have spoken of as having been acquired are the Anaconda, Washoe, Parrot and Colorado Smelting & Refining Company; Mr. Rogers already had a loan on some Butte & Boston stock, and subsequently acquired the Butte & Boston stock. As to whether purchases were made by the same adventures of Boston & Montana about the same time, your information is better than



mine; I have no such recollection; I do not know that I would call these gentlemen adventurers. I do not think that comes within the law, sir, as an investor in mining shares is not necessarily what you would call mining adventurer; not if my understanding of the language is correct. I wish to say, to the best of my recollection at the present time, that neither Mr. Rogers nor myself had bought any shares of Boston & Montana. I may be in error, but I think not. I think you are absolutely in error when you state that immediately upon the organization of the Amalgamated Copper Company and the acquisition of the interests which it did acquire in these other companies, there appeared, in Butte at least, to be entire harmony between the management and operation of those properties and of the Butte & Boston, and Boston & Montana, Mr. Hyams being generally in charge of all of them in the spring of 1899. To the best of my recollection, Mr. Hyams had not the slightest thing to do with those properties which were taken into the Amalgamated, either before or immediately after its organization. Not only that, but Mr. Hyams, if I remember rightly, had been associated with Mr. Bigelow, and they were in control of the Boston & Montana and the Butte & Boston. My recollection is distinctly at variance with what you have stated to be the facts. It seems to me that you really hardly have any right to make a statement of fact as a witness would, and then if that statement is contrary to what I believe to be the truth, ask me to back it up. The

Amalgamated Copper Company shortly after its organization acquired the stocks. It came about undoubtedly that it required the stocks of those companies and not of some other companies, as Butte & Boston and Boston & Montana, because Mr. Henry H. Rogers wished to purchase those shares, and believed it was a good purchase. There were no other companies whose stocks Mr. Rogers regarded, as disclosed in his negotiations with me as desirable to thus acquire, that I recall. As to whether I did not regard it as desirable to acquire the stock of the Boston & Montana for the Amalgamated Copper Company, I would like to answer that fully by saying that I had a very high opinion of the value of the Boston & Montana mine. I would have liked to have bought the whole of it if I could have. I could not, and I had no interest in it, and as I recall it, no shares at that time. Butte & Boston, the other company which you have spoken of in this connection, was in litigation. I think it is undoubtedly correct to say that it would not have been desirable to have acquired it at that time because of that fact. It was not acquired until a long time afterward. The advisability of acquiring the stock of that company may have been canvassed with Mr. Rogers and it may not; my recollection is that he was opposed to it, and that recollection being pretty clear in my mind, it probably is true, it must have been true, that the matter was discussed, but in view of the pending litigation it was dismissed and we concluded not to acquire any stock of that company for the

Amalgamated. My recollection is not so clear in regard to the Boston & Montana, because my recollection is that the people who held that were not disposed to sell it; that was regarded as one of the best stocks in the camp, and it is today, for that matter. The Boston & Montana properties were not involved in litigation to the same extent as the Butte & Boston, but it was substantially the same kind of litigation in that, if I remember rightly, that part of their ore bodies was attacked, but not to the extent and proportion to the whole as was in the case of the Butte & Boston, the chief contention being concerning the apex of the Johnstown-Rarus, it being contended that in its descent into the earth it passed equally into the mines of the Pennsylvania formation, being the Butte & Boston property, or the Boston & Montana, but I have a recollection that one of the principal pieces of litigation with the Boston & Montana was in connection with the so-called Minnie Healy, but my recollection is not clear when that came. The Minnie Healy litigation started prior to 1902, because Mr. Marcus Daly died sometime prior to that, and I remember discussing with him the Minnie Healy case when I was in Butte; he died in December, 1900, and my recollection is that the Boston & Montana acquired the interests of Miles Finlen in the spring of 1899, with a suit of that company pending. I don't know of any other companies that were canvassed as being desirable acquisitions. I don't know that there was any reason one way or the other for stopping there or go-

ing on with other companies; it so happened that those properties were under discussion and they were taken over; that is, the interests which were acquired were taken over; there was no discussion or reference to any other properties, absolutely none outside of Butte, in any way, and I cannot recall the discussion of any others in Butte; I would simply say, because evidently Mr. Rogers did not consider any other properties; he was the dominant spirit. As to why Mr. Rogers did not go on and acquire, or seek to acquire, other properties in Butte, Mr. Rogers is dead, and therefore not here to speak for himself; it is fourteen years ago and I would hesitate to undertake to give the motive that actuated him; I can only guess, and that you do not want; he may have revealed the motive; I do not recall anything of that sort. There were other properties in Butte, but I don't know whether they were equally rich and desirable; my belief is to the contrary. Do you mean to say that there are other properties in Butte of equal value to the Anaconda and the Boston & Montana? You have lived there, but until you said that I did not know it. The properties of Senator Clark, were as valuable as those of the Colorado Company; reference was made to those companies which included the Anaconda and the Boston & Montana. At that time I did not think so much of the properties of Senator Clark. I do not know whether I would have put them alongside of a minor property like the Colorado Smelter or not. It was the same vein on adjoining property, if I

remember rightly. Whether it was longer on the vein or not, I do not recall. As to whether the Parrot was on the same vein, it certainly was not to compare with the Anaconda and Boston & Montana. The Amalgamated did some years afterward acquire the controlling interest in both the Butte & Boston and Boston & Montana; I have forgotten the date. The Amalgamated did not, so far as I know, go out and acquire in the open market the shares in the Butte & Boston and Boston & Montana. My recollection is that those shares in those companies were taken into the Amalgamated at a time when I was in California in the winter, on a long vacation, and I know nothing of those negotiations. I had nothing to do with them, and knew nothing of them. I have no knowledge of when the effort thus to accumulate those stocks in the hands of certain individuals with a view to turning them over to the Amalgamated did actually commence. I do not know through whom, if through anyone, the purchases were made; I recall having a large interest myself in the Butte & Boston and having sold those shares in the open market, unfortunately, before the rise came; pretty good proof that I did not know anything about it. If you say that the absorption of those companies was in 1901, then I sold prior to that. I have already told you that I knew nothing of how the controlling interest in the Butte & Boston not having passed to the Amalgamated upon its organization, it did subsequently acquire that control. I cannot tell you why Mr. Rogers

and associates, having acquired the control of these stocks which subsequently were transferred to the Amalgamated, he and his associates did not hold them, or why a separate corporation was organized which became the holder of these stocks; it is not within my knowledge as to why Mr. Rogers did not or did do a thing. I canvassed with Mr. Rogers the purpose of organizing the Amalgamated as a holding company for these stocks. I do not think he outlined his purpose at all; I recall distinctly having many interviews with him after my first visit to Butte, and before my second, and after the second, wherein I tried to show him the very great value of the Butte mines and the advantages that would come by a large ownership in the big profitable mines. There were many discussions on that. As to why Mr. Rogers and his associates, thus having made their investments in the stocks of these various companies, organized another company and turned those stocks over to it, I can only answer for myself and I am very ready to do that. I should have been glad to have seen a company organized to take in all of the large producing companies in the central group at Butte because I believe that such a company would make very great savings, economies, and would benefitiate that wonderful hill as could be done in no other way. Mr. Rogers evidently followed his own course, pursued a different one from what I advocated, and that company alone was formed. Why he did that I cannot say; I know what my wishes were. The plan that was

followed differed from the one I had in contemplation because the Amalgamated Company only took in those few certain interests which you have referred to; it was not until a considerable time afterward that the Butte & Boston and the Boston & Montana were acquired; not until long afterward that Senator Clark's property was acquired. If I am not mistaken, there are other properties there today, such as North Butte, and others, which have never been acquired, and have never been sought, so far as I know; they were existing mines then but have ~~never~~ been better developed since. I would have been glad to have acquired the controlling interest in all of the companies operating in Butte, but the plan did not go that far. I believe that there would be a saving of millions of dollars every year by working those properties together and cutting out unnecessary shafts, saving duplication of pumps, hoisting apparatus, and all those various mining costs. Why Mr. Rogers quit when he acquired these I am not able to tell you. I am not able to give you any more definite information in respect to his purpose and objects in the incorporation of the Amalgamated Copper Company.

Cross Examination by Mr. Garver.

So far as I know there was no discussion as to any other properties outside of Butte. The acquisition of the Michigan properties in connection with the formation of the Amalgamated Copper Company was never discussed, or of the Rio Tinto mines, or the Clark properties, then, or at any



time that I ever heard of. The Clark properties were not acquired until after the death of Mr. Rogers. My recollection is that the Heinze settlement was made before Mr. Rogers died, but not until long after the formation of the Amalgamated Copper Company. I can only state personally what I thought of the value of the Heinze properties; I did not know of any large bodies of ore, and I could get no trace of any large bodies of ore, but in his litigation he laid claim to bodies of ore which belonged to other companies; if he prevailed in that litigation, then his property would have been of value; otherwise I believed it to be of comparatively small value. When the Boston & Montana and Butte & Boston Company were taken into the Amalgamated in 1901, the capital stock of the Amalgamated was increased at that time. My recollection is not definite on whether the increased stock of the Amalgamated was offered to all the stockholders of the Butte & Boston and Boston & Montana in certain proportions; I was not here; I had nothing whatever to do with it; I was in California. I do not recall that there was a public offering at that time. We were considering the acquisition of those properties as an investment at that time largely from the economic point of view as to the operation of the properties as an entirety. Such acquisitions under a common ownership would also have eliminated the expensive litigation that at that time was affecting nearly all of the ore bodies in the Butte district.



## Re-Direct Examination by Mr. Walsh.

As to the question of relationship between the properties of the Colorado Company and any of these other companies that would give rise to any apex litigation, the litigation was not confined to the question of the apex. If you remember, in the case of the Minnie Healy it was a question of ownership by an insane person. I do not recall at the moment that the Colorado was in litigation. I can instantly give you two or three reasons why there would be economy of operation observed in a common ownership between the Colorado and the balance of them. In the first place, the Colorado had a small smelter; the Anaconda had a large one. The Anaconda could add on those ores and treat them at very much less expense per ton, which in the aggregate would amount to a very large sum in the course of a year. That in itself was a very important item, and was exactly what happened. I do not recall how soon after the Colorado smelter was dismantled; the ores went to Anaconda a short time after. I don't know that Mr. Lawson and I would agree as to what his relation to the enterprise was. It is a long time ago and I think it is evident from various publications that our recollections are not quite the same. I would not want to get in conflict with Mr. Lawson in regard to that. Mr. Lawson had an interest in Butte & Boston. I saw a great deal of him in those days, and we had a number of discussions. What Mr. Lawson did with others I am not prepared to say, unless I was present. I am not able to re-

call any meeting between Mr. Lawson, Mr. Rogers and myself when these matters were under discussion. I should say there were one or two meetings, but I cannot recall them. Mr. Lawson and I did meet and confer about these matters. I should say that Mr. Lawson made a number of suggestions. I do not know that I can recall specifically what they were; he was not a director of Amalgamated; he had large interests in Butte & Boston, and I think subsequently in Boston & Montana. I do not know that I can help you very much in regard to his activities prior to and leading up to the actual incorporation of the Amalgamated. I do not recall that Mr. Lawson had anything to do with the acquisition or the purchase of the stocks which eventually went to the Amalgamated definitely. I think that Mr. Lawson made suggestions in regard to buying other properties; I think he was very anxious to have Butte & Boston and Boston & Montana. Mr. Rogers did not accept his suggestion. As I have already testified, he followed his own taste. What communication he had with Mr. Rogers without my knowledge, of course I have no information on. Mr. Lawson and I had our individual and separate interests in the Butte & Boston, and I think similar interests in two or three other companies; I do not recall any business in which we were jointly interested. The Boston & Montana and the Butte & Boston were generally known as Boston stocks; those two projects were very largely floated by Boston people I think; I think they were largely

owned by Boston people, but my recollection is that they were floated by Butte people; my recollection is that Butte and Boston was floated by Butte people, but they were largely owned in Boston, by the Davis estate. There was one other company at Lake Superior in which Mr. Lawson and I were interested, the Arcadian Mining Company, and somewhere about that time a property near Salt Lake, Utah; the mine was the Highland Boy mine, the company was the Utah Consolidated. The Arcadian was near Houghton, Michigan; the Isle Royale is there too; one is on one side of Houghton, and the other on the other. To the best of my knowledge and belief, Mr. Rogers had never heard of the copper mines at Butte up to the time he requested me to make examination of the Butte & Boston, in June, 1898; I am very sure that my recollection, from my first interview, is that he had not the slightest conception of the institution. I suppose there are a great many things that happened in which I took an active part that I cannot recall at this date, and individuals, that at the moment I do not recall. Mr. Daly and Mr. Rogers and Governor Flower are dead, and Mr. Rockefeller is in very poor health. At the moment I do not think of anyone else who would be able to tell you about the negotiations leading up to the organization. As to there having been introduced here this morning an advertisement in the Boston "Herald" of date Saturday April 29, 1899, telling of the organization of the Amalgamated Cop-

per Company, and inviting public subscription, a notice telling of the organization, signed by Mr. Daly as president and Mr. Rogers as vice-president and Mr. Rockefeller secretary and treasurer, and invitations for public subscription signed by the National City Bank, I remember there was a public offering; I do not recall the details of it. What you have just read, which is as follows:

**"AMALGAMATED COPPER COMPANY.**

Capital . . . . \$75,000,000.

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This company is organized under the laws of the State of New Jersey for the purpose of purchasing and operating copper producing properties. Its capital is \$75,000,000, divided into 750,000 shares of common stock of the par value of \$100 each. It has no bonds or mortgages debt. This Company had already purchased large interests in the Anaconda Copper Company, Parrot Silver & Copper Company, Washoe Copper Company, Colorado Smelting & Mining Company, and other companies and properties.

Marcus Daly, President.

H. H. Rogers, Vice-President.

William G. Rockefeller, Sec't & Treas.

New York, April 28, 1899."

**"OFFER FOR PUBLIC SUBSCRIPTIONS.**

Referring to the foregoing statement of the Amalgamated Copper Company of New Jersey notice is hereby given that offers for subscription to 750,000 shares of the par value of \$100 each of the stock of said copper company will be received

at the National City Bank of New York until twelve o'clock noon, Thursday, May 4, 1899, at the rate of \$100 per share. Subscriptions must be addressed to the National City Bank, and accompanied by a certified check to its order for five per cent. of the amount of such subscription. The balance to be payable within ten days after date of notice of allotment. Temporary receipts on payment of sums due on allotments will be issued, exchangeable for certificates of stock as soon as same can be engraved. In case of oversubscription allotments will be made pro rata. The right is reserved, however, to reject any subscription.

NATIONAL CITY BANK OF NEW YORK,

James Stillman, President.

New York, April 28, 1899.

52 Wall Street, New York."

I have no doubt is the one; I have forgotten the wording, but I recall there being an advertisement. I do not recall who prepared that; very likely I knew at the time. I do not know by whose approval it was published. And apparently a similar advertisement was published in the New York "Herald." I do not remember at whose approval either of them was published; I do not recall that I had anything to do with it personally; I might have. In regard to the statement "This company has already purchased large interests," whether that implied that it was contemplated that other purchases would be made, I don't know that I would necessarily draw that inference. The significance I would give to the

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rd "already" would be that they had been purchased. If the interests had already been purchased by the Amalgamated it must have had money to make the purchases; it could have got money only by subscription to its stock. I do not recall whether the records show that the stock was issued in exchange for the properties acquired, or the stock interests acquired; the records show that. I do not know who sold the stock through the National City Bank in accordance with this advertisement. The public is advised by the notice that the company has purchased large interests in Anaconda. I do not know whether the City Bank had information to furnish purchasers who went to the National City Bank conformably to this advertisement in relation to the extent of interests which had been acquired or the value of the properties whose stock had been acquired, or furnished it, or not. I do not think there was anything in the nature of a prospectus which was gotten out for the purpose of misleading the public. I do not recall anything being published except this notice, and I do not recall any being prepared, and as a director of the company I do not recall any at all. I should be inclined to think there never was any.

Re-Cross Examination by Mr. Garver.

I never discussed in any way with Mr. Rogers regarding the Arcadian, the Utah Consolidated or the Royale property into the Amalgamated; it never was mentioned between us, or suggested. I do not recall that Mr. Lawson had anything to

do with the actual incorporation of the Amalgamated Copper Company. I think Mr. Lawson is a great advertising expert.

Re-Direct Examination by Mr. Walsh.

When I say that I do not recall that Mr. Lawson had anything at all to do with the organization of the Amalgamated, I mean the legal work of the incorporating, the organization, the charter, the by-laws, and things of that sort; he is not a lawyer.

Re-Cross Examination by Mr. Garver.

I had discussions with him about the formation of the incorporation and the properties that were to be taken in. I think I have already testified that he was very much interested in Butte & Boston, and I am not sure about Boston & Montana, but I think he wanted those taken in, and at that time Mr. Rogers was averse to taking them in.

Defendants rest.

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### COMPLAINANTS' REBUTTAL.

[Testimony of Walter Harvey Weed, for Complainants  
(Recalled.)]

WALTER HARVEY WEED, a witness called and sworn on behalf of the complainants', testified in rebuttal in substance as follows:

I heard the testimony of the witness, Mr. Bruce, concerning the treatment to which he subjected the small quantity of pulp for the purpose of making concentrates out of it, that is 4500 gram sample. Q: What would you say as to the adequacy or conclusiveness of a test of that character, with a view to determining whether ores of the



characters spoken of could be successfully operated in a commercial way. MR. EVANS: We object: the witness has not shown himself qualified to testify to those matters, distinctly disclaiming to be a metallurgist. THE COURT: The Court will receive his testimony, but it will be, of course, weighed in the light of his former statements. Objection overruled, to which ruling of the court the defendants then and there excepted. As to the adequacy or conclusiveness of a test of that character, with a view to determining whether ores of the characters spoken of could be successfully operated in a commercial way, as a mining engineer I should regard the test as inconclusive; as a preliminary test to show what should be done in further tests, I should consider it useful. I have consulted the mine maps of the Alice Company, with a view to determining the length of drifts on the 600 level and above,—the blue print map submitted in evidence, and the only Alice map, however, I have is the one furnished in 1886 report of the Alice Company. That is the one I referred to in my testimony. I agree with Mr. Gillie that there is approximately ten miles of workings in the Alice ground. As to how much of those would be found on the 600 and above, I could not give it in percentages, but I should say roughly speaking, perhaps, one-third—one-half. I have looked at the map which I hold in my hand, the blue print introduced in evidence, and have looked over the samples as marked on the map by numbers. I measured up,



scaled this map, which is said to be on a fifty foot to the inch scale, and using that scale I find a total of 957 feet that were sampled. As representing the total length of the Alice and Magna Charta workings, or even of the Alice mine alone, I should consider it as a very small distance to sample, to estimate the true value of the ore present. I have looked over the table on the blue print, which purports to give the assay values of the ores in the samples. From the assays given there, I should say that there were two samples of absolute waste, and a number of extremely low grade samples in the list, and that at least, in my judgment, more than half of these samples would not be seriously considered by a man intending to mill the ore. In the regular course of operations the samples thus spoken of would be left as pillars in the mine, or used as waste to fill up the stopes.

#### Cross Examination:

As a mining engineer I consider Mr. Bruce a very able man regarding zinc operation, and you heard Mr. Bruce say that he did not despair of having a successful method of treating that ore. I do not know how much of the ten miles of workings in the Alice mine was open in 1910, or even in 1902. That would include the workings below the 1000 foot level. The only information I have regarding the 1000 foot level is from the annual report of the Alice they spoke of a large stope, 300 feet in length on the 1300 level, that ran up and down. The north vein in that property

is called the hard vein, usually alluded to as the zinc vein. I am not familiar with the stoping, but I know the 500 drift, given by Professor Blake, and the report by Professor Maynard showed that drift along the north, middle and south vein to that point, or the point separated by the clay selvage. I would hardly like to say that my map shows a comparatively small amount of development on the north vein. It showed they had cut the north vein by crosscuts. Judging simply from the map of the deeper levels, I should say they had gone down in the north vein. My recollection is that the deeper levels are on the north vein. I knew of Mr. Dwelle. I believe he is employed in a responsible capacity. I think he is dead now. I am not definite about that. I had not heard that he died in Colorado. In speaking about eliminating the ore shown in the low grade samples, that might be possible in mining operations, but you would have to know the ore body to be sure of that, but in my examination of the Butte and Superior property, that question was discussed because among the questions I was asked to determine was whether the mine had been robbed, whether in the extraction for the Basin concentrator they had taken out the crystalline ore and left this dense zincy ore behind. Therefore, I assumed that in mining operations, if your samples cover considerable space of ground of good ore, and the low grade samples covered hard ore, you would leave it as pillars. The ore of the payable grade would be mined if it

could be, and you would not take out the waste unless you had to. In sampling a mine thoroughly, such workings as are open, particularly in that zinc ore, a miner cannot tell at all times if he is taking the good ore. He can tell pretty nearly what he is taking, but an engineer in the beginning wants to take pretty near everything to find out what the conditions are.

(Witness excused.)

Both Rest.

(All maps introduced in evidence in this case, as original exhibits, are to be sent to the Circuit Court of Appeals as original exhibits, and for that reason do not appear in this statement.)

That after the submission of the foregoing evidence and the entry of the decree herein on July 2, 1915, to-wit, on January 31, 1916, a hearing was had upon the question of the allowance of attorneys fees to the complainants, and thereupon, by consent of counsel, the following memorandum of the services performed by the solicitors for the complainants was submitted, to-wit:

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[**Memorandum of Services Performed by the Solicitors for the Complainants.**]

"In this case, the action was commenced in November, 1911. About two weeks' time was consumed in collecting data preliminary to the filing of the complaint as to the organization of the defendant companies and as to the relation which they bore to each other. Aside from the time thus consumed in collecting data, about a

week's time was consumed in investigating the law which would permit the institution of the action and as to how service could be obtained upon the defendants and as to whether the Amalgamated Copper Company should be a party to the action. Demurrer and motions were afterwards interposed, although no considerable time was required in getting them out of the way.

An injunction pendente lite was applied for to restrain the disposition by the Alice Company of the stock, and a hearing was had and evidence introduced, which consumed about a week's time. Upon this hearing, the law of the case was thoroughly exploited and exhaustive briefs were prepared, which consumed probably a week's time. In the work of preparation for the final trial and as to the evidence that could be obtained, trip was made by Mr. Walsh from Washington to New York and Boston to gather data as to the organization of the Amalgamated Copper Company, which consumed two or three days. The deposition of Mr. Ryan was taken in New York, and in order to take this deposition it was necessary for Mr. Nolan to make a trip from Helena to New York and a trip was made by Mr. Walsh from Washington to New York, and to do this, Mr. Nolan was absent from the office about ten days. Depositions were afterwards taken in Boston and New York, which took about four days. These depositions were all used upon the final trial. Then came the final trial of the case and about a week was consumed in consulting with expert witnesses who testified

in the case, going over the entire field of their evidence, and the trial itself which consumed about seven days. After the trial briefs were prepared, the exhaustiveness of which the court is advised."

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[Order Approving, etc., Statement of Evidence.]

CERTIFICATE OF APPROVAL OF STATEMENT  
OF EVIDENCE.

THE FOREGOING STATEMENT of the evidence in the case of PETER GEDDES, et al., Complainants, vs. ANACONDA COPPER MINING COMPANY, et al., Defendants, pending in the District Court of the United States for the District of Montana, is, within the time allowed by law, and the rules of Court, approved as a true, complete, correct and properly prepared statement of all of the evidence offered and introduced upon the trial and hearing of said case, including all exhibits, excepting maps, the originals of which the clerk is directed to transmit to the Clerk of the Circuit Court of Appeals, for use in that Court as original exhibits.

Dated this 16 day of Feb., 1916.

,        GEO. M. BOURQUIN,  
Judge of the District Court of the United States,  
for the District of Montana.

[Filed Feb. 16, 1916. Geo. W. Sproule, Clerk.]

[Certificate of Clerk United States District Court to  
Transcript of Record.]

UNITED STATES OF AMERICA,  
District of Montana, ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing transcript on appeal, consisting of 984 pages numbered consecutively from 1 to 984 inclusive, is a full, true and correct transcript (formal parts only omitted) of the pleadings, decrees and all other records and files in said cause mentioned in the praecipes for transcript herein, as appears from the original records and files in said court in my custody as such clerk.

AND I DO FURTHER CERTIFY and RETURN that I have annexed to said transcript and included within said paging the original citations issued in said cause.

I FURTHER CERTIFY That all original maps and exhibits mentioned in the stipulation and order therefor are transmitted herewith.

I FURTHER CERTIFY That the costs of the transcript of record amount to the sum of four hundred forty-four 75/100 dollars (\$444.75) and have been paid by the appellants.

IN WITNESS WHEREOF, I have hereunto set

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*Peter Geddes et al. vs.*

my hand and affixed the seal of this court the  
15th day of July, in the year 1916.

GEO. W. SPROULE,

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Clerk of the District Court of the United States,  
in and for the District of Montana.

[SEAL]

## United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Baecho, Co-Partners, Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

Upon Appeal from the United States District Court for the District of Montana.

*Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.*

## United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the twelfth day of March, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable William B. Gilbert, Senior Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; and Honorable Charles E. Wolverton, District Judge.

No. 2831.

PETER GEDDES et al., Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, et al., Appellees.

*Order of Submission.*

Ordered, appeals in the above entitled cause argued by Mr. T. J. Walsh, counsel for the appellants, and by Messrs. L. O. Evans and W. B. Rodgers, counsel for the appellees, and submitted to the Court for consideration and decision.



United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to wit, the October term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the first day of October, in the year of our Lord one thousand nine hundred and seventeen.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.

The Honorable Erskine M. Ross, Circuit Judge.

The Honorable William H. Hunt, Circuit Judge.

No. 2831.

PETER GEDDES et al., Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, et al.,  
Appellees.

*Order Directing Filing of Opinion and Dissenting Opinion and  
Filing and Recording of Decree.*

By direction of the Honorable William B. Gilbert, Circuit Judge and Honorable Charles E. Wolverton, District Judge, before whom, together with the Honorable Erskine M. Ross, Circuit Judge, the cause was heard, ordered that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a Decree be filed and recorded in the Minutes of this Court in said cause, in accordance with said opinion.

By direction of the Honorable Erskine M. Ross, Circuit Judge, ordered that the Dissenting Opinion written by him and this day rendered in said cause be forthwith filed by the clerk.

## United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GREGGS et al., Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, et al.,  
Appellees.

(Opinion U. S. Circuit Court of Appeals.)

GILBERT, *Circuit Judge*, with whom concurs  
WOLVERTON, *District Judge*:

We concur in the opinion of Judge ROSS, except in his conclusion that the sale to the Anaconda Company should be annulled.

It cannot be denied that the majority of the stockholders of the Alice Company had the right to sell the corporate property. After the sale, and at a meeting regularly called and held under the authority of the laws of Utah, the requisite number of the stockholders passed a resolution directing that the corporation be dissolved, its affairs wound up, and its assets distributed. The appellants had no power to prevent dissolution against the will of the majority. Nor had they the right to say that a sale should not be made to the Anaconda Company, if that company outbid others. They had, however, the right, and that right the court below secured to them, to have the property sold free from the effect of any unfair combination between the majority stockholders and the Anaconda Company. The Court below followed the rule of *Mason v. Pewabic Mining Company*, 133 U. S. 50, which holds that any stockholder can require that upon dissolution the corporate property shall be sold to the highest bidder for cash, and not to another corporation in which the majority stockholders are interested, and on terms fixed by them. There is no essential difference in principle between that case and this, and no substantial difference in the facts. The only difference is that in the *Pewabic* case the minority stockholders were in court insisting on their right to a sale at public auction, while in the case at bar the minority assert that no sale whatever should be made. Upon the law and the facts they are in no position to prevent a sale, nor to thwart the purpose of the majority to sell to another corporation. When they subscribed to their stock, they assented to the laws of Utah governing the distribution of assets of corporations, and they must abide by them. Nor is any relevant distinction to be found in the fact, as asserted, that in the *Pewabic* case the corporation had ceased to exist, while in the present case the corporation was still in existence. It is true that the charter of the *Pewabic Mining Company* had expired, but under the laws of Michigan it continued to be a body corporate, for all purposes except that of continuing in business, and among the per-

missible functions of its continued existence as prescribed by law was that of winding up its affairs, disposing of its property and dividing its capital stock. In 10 Cyc, 1302, it is said: "So if, in the exercise of a sound discretion the majority of the shareholders deem it expedient to do so, they may sell out the whole property of the corporation to a new corporation, taking payment in its shares, to be distributed among such of the old shareholders as may be willing to take them. \* \* \* If it is conceded that such action on the part of the majority is lawful, then the principle follows that the judicial courts will not examine into the affairs of the corporation for the purpose of determining whether the action is expedient, or for the purpose of scanning the motives which have led to it." In *J. H. Lane & Co. v. Maple Cotton Mills Co.*, 226 Fed. 692, the Circuit Court of Appeals for the Fourth Circuit said: "The courts cannot pass upon the question of expediency of dissolution and sale, for that is the very question which the Legislature has authorized the majority of the stockholders to decide. \* \* \* The courts cannot say that the discretionary power of the majority conferred by the statute does not extend to the dissolution of a prosperous corporation, or to a dissolution which will probably result in practical consolidation by the purchase of the property by another corporation. The fact that the state has not provided for consolidation without a dissolution of the corporation and sale of the property by no means implies that there is any policy of the state against dissolution and sale resulting in consolidation." The majority of the stockholders have rights which the court must recognize and protect. They have the right to retain the benefit of the sale already made unless a sale for a higher price can be made. This was the protection afforded the majority stockholders in the *Pewabic* case, and it is here afforded by the decree of the court below.

The decree is affirmed.

[Endorsed:] Opinion. Filed Oct. 1, 1917 F. D. Monekton, Clerk, by Paul P. O'Brien, Deputy Clerk.

## United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Isador Baer, Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

Upon Appeal from the United States District Court for the District of Montana.

Before Gilbert and Ross, Circuit Judges, and Wolverton, District Judge.

*Ross, Circuit Judge:*

This suit was brought by certain minority stockholders of the appellant Alice Gold and Silver Mining Company, a corporation organized in 1881 under the laws of the then Territory of Utah, to procure a decree annulling a deed of all of its property to the appellee Anaconda Copper Mining Company, a corporation, made in consideration of a transfer of 30,000 shares of the capital stock of the latter company to the Alice Company—the grounds upon which the relief is sought being, first, that neither the board of directors nor a majority of the stockholders of the Alice company was authorized to sell or dispose of all of its property against the protest of any of its stockholders; second, that the Alice company had no authority to acquire the stock of the Anaconda Copper Mining Company; third, that the parties who negotiated and carried out the sale and the parties who negotiated and carried out the purchase were substantially the same, all being controlled by John D. Ryan, who was at the time a director of both companies and the president of the Alice Company, and that the consideration upon which the transaction was based was inadequate; fourth, that the purpose with which the purchase was made was to monopolize the production of copper in the Butte District of Montana, where the property is situate, and the sale of the same in the markets of the world, in violation of the Federal Anti-Trust Act known as the Sherman Act.

While the last point mentioned has been very ably and elaborately argued by counsel on both sides we find it unnecessary to consider it for the reason that as we understand the recent decision of the Supreme Court in the case of Wilder Manufacturing Company

vs. Corn Products Refining Company, 236 U. S. 165, it is not available to the appellants.

That case involved the construction of the Anti-Trust Act and the effect of a profit-sharing contract of the Refining Company and those dealing with it exclusively, and the right of that corporation to recover for goods sold by it to the Manufacturing Company. The court, in denying the defense interposed by the purchaser based upon the claim that the Refining Company had no legal existence as it was a combination composed of all the manufacturers of glucose or corn syrup in the United States, illegally organized with the object of monopolizing all dealings in such products, in violation of the Anti-Trust Act of Congress, and had further sought to perpetuate its monopoly by devising a certain profit-sharing scheme, based its ruling upon two grounds, the second of which is as follows:

"In the second place, that the proposition is repugnant to the Anti-Trust Act. Beyond question re-expressing what was ancient or existing and embodying that which it was deemed wise to newly enact, the Anti-Trust Act was intended in the most comprehensive way to provide against combinations or conspiracies in restraint of trade or commerce, the monopolization of trade or commerce or attempts to monopolize the same. *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 106. In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions. Thus the statute expressly cast upon the Attorney-General of the United States the responsibility of enforcing its provisions, making it the duty of the district attorneys of the United States in their respective districts under his authority and direction to act concerning any violations of the law. And in addition, evidently contemplating that the official unity of initiative which was thus created to give effect to the statute required a like unity of judicial authority, the statute in express terms vested the Circuit Court of the United States with 'jurisdiction to prevent and restrain violations of this act,' and besides expressly conferred the amplest discretion in such courts to join such parties as might be deemed necessary and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, c. 647, 26 Stat. 209. It is true that there are no words of express exclusion of the right of individuals to act in the enforcement of the statute or of courts generally to entertain complaints on that subject. But it is evident that such exclusion must be implied for a two-fold reason: First, because of the familiar doctrine that 'where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes.' *Farmers' & Mechanics' National Bank v. Dear-*

ing, 91 U. S. 29, 35; *Barnet v. National Bank*, 98 U. S. 555; *Oates v. National Bank*, 100 U. S. 239; *Stephens v. Monongahela Bank*, 111 U. S. 197; *Tenn. Coal Co. v. George*, 233 U. S. 354, 359; second, because of the destruction of the powers conferred by the statute and the frustration of the remedies which it creates which would obviously result from admitting the right of an individual as a means of defense to a suit brought against him on his individual and otherwise inherently legal contract to assert that the corporation or combination suing, had no legal existence in contemplation of the Anti-Trust Act. This is apparent since the power given by the statute to the Attorney General is inconsistent with the existence of the right of an individual to independently act since the purpose of the statute was where a combination or organization was found to be illegally existing to put an end to such illegal existence for all purposes and thus protect the whole public—an object incompatible with the thought that such a corporation should be treated as legally existing for the purpose of parting with its property by means of a contract of sale and yet be held to be civilly dead for the purpose of recovering the price of such sale and then by a failure to provide against its future exertion of power be recognized as virtually resurrected and in possession of authority to violate the law. And in a two-fold sense these considerations so clearly demonstrate the conflict between the statute and the right now asserted under it as to render it unnecessary to pursue that subject further. In the first place because they show in addition how completely the right claimed would defeat the jurisdiction conferred by the statute on the courts of the United States,—a jurisdiction evidently given, as we have seen, for the purpose of making the relief to be afforded by a finding of illegal existence as broad as would be the necessities resulting from such finding. In the second place because the possibility of the wrong to be brought about by allowing the property to be obtained under a contract of sale without enforcing the duty to pay for it, not upon the ground of the illegality of the contract of sale but of the illegal organization of the seller, additionally points to the causes which may have operated to confine the right to question the legal existence of a corporation or combination to public authority sanctioned by the sense of public responsibility and not to leave it to individual action prompted it may be by purely selfish motives. As from these considerations it results not only that there is no support afforded to the proposition that the Anti-Trust Act authorizes the direct or indirect suggestion of the illegal existence of a corporation as a means of defense to a suit brought by such corporation on an otherwise inherently legal and enforceable contract, but on the contrary that the provisions of the act add cogency to the principles of general law on the subject and therefore make more imperative the duty not directly or indirectly to permit such a defense to a suit to enforce such a contract, we put that subject out of view and come to the only remaining inquiry, the alleged effect of the previous ruling in the *Continental Wall Paper Case*, *supra*."

So far as the point above alluded to is concerned, the only dif-



ference between the case cited and this is that in that case a private corporation undertook to avoid the payment of money due from it under a contract with another private corporation on the ground that the latter was an illegal monopoly and therefore had not the power to make the contract because of the Anti-Trust Act, while here the contention is that the Copper Company was without power to make a certain purchase from another private corporation because of the same Act—which is, in principle, as we conceive, no difference at all.

The articles of incorporation of the Alice Company define its powers as follows:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining works, to buy, sell, and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways, and freight and transportation routes, to facilitate the business of the company; to appropriate, buy and sell water, water rights and ways for conducting the same, and generally, to do all kinds of business incident to, connected with, or convenient to the management of a general mining business, in the Territories of Utah, Montana, Idaho, and in any State or Territory of the United States."

The record shows that the property consisted of about 140 acres of mining ground on the hill north of the city of Butte, and is contiguous to some of the properties of the Anaconda Company; that through it runs for more than three-quarters of a mile a great silver bearing lode called the Rainbow Lode, carrying some gold, upon which lode the company commenced work about 1881, sinking a shaft 1500 feet, and running drifts of the aggregate length of about ten miles, and from which lode it extracted a large amount of ore, out of which it paid its stockholders, commencing March 15, 1881, and ending April 27, 1898, \$1,075,000—there having, however, been no dividends paid between November 25, 1891, and December 31, 1896. While that work, according to the evidence, disclosed very large bodies of zinc-lead ore, it left available no more silver ore. The zinc-lead ore being peculiarly refractory, and there not being then, nor yet, according to the evidence, any known process by which it could be worked at a profit, and the silver ore being the only kind in the mine then, or yet, according to the evidence, known that could or can be worked at a profit, work upon the mine by the company was suspended prior to 1894. From time to time thereafter it was worked in a small way under leases—the company receiving a royalty on such ore as the lessees were able to work. Water was allowed to raise in the mine first to the 1000 and afterwards to the 700 foot level, when, about 1899, the mill which was upon one of the claims was closed and the company ceased operations. In 1902 the shaft house burned, but the company erected a new hoist by which the lessees, also called in the record "tributors", could hoist the ore they desired to take out. While the leases were in operation the royalties received by the company were insufficient to meet the necessary expenditures for insurance, taxes, and watch-

ing the property; and also proving unprofitable to the lessees, the leases were abandoned and all work ceased. The indebtedness of the company of course gradually increased, and at the time of the sale in question amounted to \$34,101.56, of which \$19,575.23 was incurred in the construction of the new hoist to take the place of the one destroyed by fire.

At one time during the period that the property was dormant the stock of the Alice Company—incorporated with 400,000 shares of the par value of \$25.00 each—sold as low as 12 cents a share, and for years was depressed to a very low point. But in 1905 John D. Ryan secured from the holders thereof an option on a majority of the stock at \$1.50 a share, being on the basis of \$600,000.00 for the whole property, and in February of the same year made the purchase pursuant to the option.

These further facts appearing in the record and succinctly stated by counsel, should be mentioned: Prior to the year 1899 a number of independent companies were engaged in mining and smelting copper ore in and near Butte, among them the appellee Anaconda Copper Mining Company, the Washoe Copper Company, the Parrot Silver & Copper Mining Company, the Colorado Mining & Smelting Company, the Boston & Montana Consolidated Copper & Silver Mining Company, and the Butte & Boston Consolidated Mining Company, all of which were large producers of that metal. In the year mentioned the Amalgamated Copper Company was organized as a holding company with a capital stock of \$75,000,000.00, and it acquired a majority of the stock of the Anaconda and Parrot companies, and all of the stock of the Washoe and the Colorado companies, and by 1901 it had acquired a majority of the stock of the Boston & Montana and of the Butte & Boston companies, increasing its capital stock to make these latter purchases from \$75,000,000 to \$155,000,000—leaving of the then large copper producing companies in the Butte field only those controlled by F. Augustus Heinze and those owned by W. A. Clark.

At the time of the formation of the Amalgamated Company there was in progress between Heinze and his companies on the one side, and the Boston & Montana and the Butte & Boston on the other much bitter and costly litigation, which, as soon as the last named companies became allied with the Amalgamated, involved the latter and all of its constituent companies. In 1905 and 1906 negotiations were entered into between Ryan, the president of the Anaconda and a director of the Amalgamated company, and Thomas F. Cole, on the one side, and Heinze, on the other, for the settlement of all of the litigation and adverse claims referred to, which negotiations resulted in a final settlement by which Heinze was paid \$10,500,000 in cash, in consideration of which all of the properties with which he was associated at Butte were transferred to a corporation organized by Ryan and his associates to take them over, known as the Red Metal Mining Company, all of the stock of which (having a par value of \$11,000,000) was immediately acquired by another corporation organized by the same interests to



hold it, with a capital stock of \$15,000,000, called the Butte Coalition Company, consisting of 1,000,000 shares.

It was while these negotiations were going on that Ryan acquired under the option that has been mentioned a majority of the stock of the Alice Gold & Silver Mining Company, which he subsequently turned over to the Butte Coalition Company.

Of the Red Metal Company, Thomas F. Cole was president, W. O. Thornton was vice-president, and J. C. Lalor, C. D. Fraser, and James O'Grady were also directors.

Of the Butte Coalition Company Cole was president, Ryan vice president, and Urban H. Broughton, James Hoatson, Chester Congdon, B. B. Thayer, F. L. Ames, William B. Dickson, and A. C. Carson also directors, Thayer also being then president of the Amalgamated Company.

About the same time Ryan and his associates also acquired for the same interests all of the properties of Clark except his Poser and Elm Orlu claims, which latter two claims were located on the Rainbow Lode, and not far from the properties of the Alice Company, from both of which claims more or less copper ore has been shipped.

The record also shows that a considerable quantity of copper ore has been found in a property at the easterly end of the Rainbow Lode owned by the Butte-Superior Company, which lode had, until these and perhaps other recent discoveries, always been regarded in the Butte district as a silver bearing lode only.

Very naturally, the discovery of copper ore in commercial quantities in portions of the Rainbow Lode is a reasonable basis for at least hope, and possibly, of just expectations that like ore may be found upon further exploration in the extensive properties on the same lode of the Alice company—especially when the various other veins that the evidence shows exist on those properties and cross its portions of the Rainbow Lode are considered, together with the known extent and huge production of copper ore in the district. At all events, that prospect, as shown by the record, entered into the estimates of the value of the Alice properties made by the experts on behalf of the appellants, they testifying that the finding of copper ore therein is a geological probability, which probability, as well as their estimates as to values, however, differed very widely from those fixed by similar witnesses of the appellees, who characterized the chance of finding copper ore in the properties of the Alice Company as a geological possibility—the value of the properties, according to the estimates of the former, being from three to five millions of dollars, whereas, according to the opinions of the witnesses on behalf of the appellees, they brought by the sale all that they were at the time worth.

The 30,000 shares of the stock of the Anaconda Copper Mining Company for which the properties of the Alice company were sold by its board of directors are claimed by the appellees to have been worth at the time \$1,500,000.00 and are conceded by the appellants to have been then worth \$1,250,000.00, while their then value was found by the court below to have been \$1,500,000.00 plus the amount of the indebtedness of the Alice company, the aggregate

amount of which consideration the court further found was inadequate.

With that finding we are of the opinion that, upon the record, we would not be justified in interfering. Taking such to be the fact, we are, therefore, to consider and determine whether the judgment appealed from can be sustained—which judgment adjudged and decreed the sale in question in all respects valid and binding and the title to all of the properties of the Alice company to have passed thereby to the Anaconda Copper Mining Company, there having been shown to the court to have been no bidder at the offer of all of the said properties at a public sale upon notice published in accordance with a preceding interlocutory decree of the court.

We are unable to agree to the contention on the part of the appellants that the properties of the Alice company in the condition they were at the time of the sale, and for years theretofore had been, could not be legally sold and conveyed by the directors of the company without the consent of all of its stockholders. We quite agree that the company cannot be regarded as then insolvent, for it owed but \$34,101.56, payment of which, so far as appears, was not even being asked, much less urged (by the Butte Coalition Company, which it appears was the creditor), and owned properties for which the Anaconda Copper Mining Company was willing to pay the equivalent of over one and one-half millions of dollars. At the same time, all of the ore the properties were known to contain that could be worked at a profit had been extracted and disposed of many years before, and the development of other ore therein of commercial value, should such exist, necessarily involved the risking of a large amount of money. The Anaconda company, no doubt, could afford to take that risk—especially as the evidence shows that the exploration and development of the Alice properties could be made from the workings of some of its own properties—and it is reasonable to suppose that it had sufficient information to justify it in undertaking to do so. But the Alice company not only had no money with which to make such explorations and development, but was in debt, which indebtedness was necessarily gradually increasing. Its stock was non-assessable and therefore its stockholders could not be made to furnish the money essential to any further exploration of its properties. In the course of his testimony Ryan, the president of the company, said, among other things:

"There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taken care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we

were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations."

The fact that the Butte Coalition Company owned 234,000 of the 400,000 shares into which the capital stock of the Alice company was divided, which 234,000 shares were acquired by the former company from Ryan, and that he acquired them in large part from men also of large means, and that either or all of such owners might themselves have furnished or secured the money necessary for the further development of the properties, is, in our opinion, wholly unimportant. Conceding their ability to have done so, they were not obliged by any rule of law or equity to do it.

The circumstances under which private corporations may sell and dispose by absolute conveyance of all of their property are thus stated in Thompson on Corporations:

"First: Private corporations, when expressly authorized by statute, charter, or by-laws, may sell and dispose of all the corporate property;

"Second: Private corporations, by the unanimous consent of all stockholders, in the absence of express prohibition, may sell and dispose of all corporate property;

"Third: The directors and managing officers have the power to dispose of all the property where the governing statute provides that private corporations may sell their entire property;

"Fourth: Where the corporation is in failing circumstances, or is in fact insolvent, the directors and managing officers may dispose of all the property, or make an assignment of all the corporate property for the benefit of creditors;

"Fifth: The majority stockholders may alienate all the corporate property when expressly authorized by statute, charter, or by-laws;

"Sixth: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable, and where it would be ruinous to the corporation and the stockholders to continue the business; or where there are insufficient funds to continue the business and no money with which to pay existing indebtedness; or when the corporation is in failing circumstances, or is in fact insolvent." (Sec. 2429, 2nd Ed.)

The purposes and powers of the Alice company as expressly stated in its Articles of Incorporation have already been set out.

By a statute of Utah enacted in 1905, after conferring certain powers on the corporations of the state, it is further provided:

"And any corporation now existing or that hereafter may be organized under the laws of this state for the purpose of mining, or the exploration or development of mining property, including land bearing metal, stones, lime-stone, oil, petroleum, asphalt, and other

hydro-carbons, shall, in addition to the powers above enumerated, have the power to purchase, take on bond, or lease or in exchange, or locate, or otherwise acquire, any lands, mines, options, territory, fields or claims, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in the same to such extent as the board of directors may deem prudent, subject always to the provisions of the articles of incorporation and by-laws; Provided, that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the board of directors shall not be valid or binding on the corporation until confirmed by a vote of the majority in amount of the stock outstanding, at a meeting of the stockholders duly called to consider such action of the board. When the articles of association provide that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders, sales made in accordance therewith shall be binding on the company." (Sec. 322. Compiled Statutes, 1907.)

The board of directors of a private corporation was by the common law authorized to sell or otherwise dispose of the property of the corporation, subject to the limitation that it could not sell or dispose of its entire property. (*Forrester v. B. & M. Co.*, 21 Mont. 544; *Thompson's Com. or Corp.*, 2421, Vol. III; *idem*, Vol. VII, 8356; *Noyes on Intercorporate Relations*, Secs. 114, 281.)

By the Utah statute referred to, the powers of all such corporations then existing or that should thereafter be organized under the laws of the state for any of the purposes therein enumerated were manifestly extended beyond the common law powers, and under its express terms, in view of the charter of the Alice company, we do not think it admits of doubt that the board of directors of the latter company, in the absence of any fraud or lack of good faith, and with the consent of the majority of its stockholders, was empowered to sell and dispose of all of the property of that corporation.

It is true that at the time the Alice company was incorporated the above-quoted provision of the Utah statute had not been enacted, but there was then in force a statutory provision of the territory authorizing the amendment, alteration, or repeal of the statute under which the company was incorporated (*Comp. Laws of Utah*, 1876, p. 232), which power was subsequently made a part of the fundamental law of the state (Sec. 1, of Art. XII of the Constitution).

Such reserved power, it was held by the Supreme Court of the state in the case of *Garvey v. St. Joe Mining Co.*, (91 Pac. 369,) does not extend to an agreement which the statute had permitted the stockholders of a corporation it had authorized to be incorporated to make among themselves, that its stock should be paid for in full and thereafter be non-assessable. But there was no agreement of that nature in the articles of incorporation of the Alice company; by which, as has been seen, the corporation was given the general power to buy, lease, hold, own, operate, and sell, mines, mining claims, mills, mill-sites, reduction and refining works, and to do all kinds of business incident to, connected with, or convenient for the management of a general mining business.

There is in the powers thus conferred by its charter on the Alice company no express prohibition against the sale of all of the property of the corporation, nor is there in the case any express agreement either between the corporation and its stockholders, or between the stockholders themselves, that such a conveyance should not be made—the most that can be claimed in that regard being that a conveyance of all of the property of the corporation might terminate the business of the company and thus defeat the objects of its incorporation; but not necessarily so, for, as said by the Supreme Court of Montana in *Forrester v. B. & M. Co.*, *supra*, (21 Mont. 544, 559:

"A transfer or other disposition of all its property will not *ipso facto* dissolve a corporation, although the practical effect thereof may be to defeat the object of its organization. This is so because ownership or possession of property is not essential to corporate existence. (*Gans v. Switzer*, 9 Mont. 408, 24 Pac. 18; 9 Am. & Eng. Ency. Law (2d Ed.) 505.) A flourishing mining corporation may desire to sell or otherwise dispose of its entire assets for the purpose of reinvesting the proceeds in a new enterprise within the corporate purposes, or of acquiring other mining property. Such sale or other disposition might be made at common law with the unanimous consent of the stockholders, without working a dissolution; nor would a dissolution be produced by the sale or assignment of the whole property of an insolvent corporation made by the directors—either with or without the consent thereto of all the stockholders therein."

In *Thompson on Corporations*, Sec. 90, it is said:

"The reserve power of the Legislature extends not only to altering the charter for any purpose connected with the public interests, but also to altering it for the mere purpose of changing the rights of the corporators as among themselves. This view has been taken in New York, in Massachusetts, in Illinois, in Missouri, and in other states. A necessary result of this doctrine is that the Legislature may authorize any change in the organization, purposes, or powers of the corporations which the majority might desire, contrary to the will of the minority."

Upon that subject there is more or less conflict in the decisions of the courts, but we find it unnecessary to pursue or decide the question in this case, for the reasons already suggested.

In the instant case the sale was made in exchange for stock in another corporation, with the intention by the board of directors of the Alice company, as is claimed on behalf of the appellees, to thereafter apportion the stock so acquired among the stockholders of the company, or its cash value to such of them as preferred cash, and thereafter to wind up its business and disincorporate the company.

The appellees dispute both the validity of the exchange and the intent with which it was made, but we find it unnecessary to decide either of those questions, because of the views we entertain regarding the two remaining points presented by the record.

It appears that Ryan was a director and the president of the

Alice company, the managing director of the Anaconda Company, a director and the president of the Amalgamated company, and a director and the president of the Butte Coalition Company; that Thayer was the director and the president of the Anaconda company, and a director of the Butte Coalition Company, while the latter company owned a large majority of the stock of the Alice company, and 500,000 shares of the stock of the Anaconda company. And although the trial court acquitted both Ryan and Thayer of any intentional wrong, saying in its opinion that it saw nothing to "inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust," yet said that though the common directors were not a majority of either board, it "is a difference in degree but not in principle. They may have dominated the board. In both cases is divided duty conflicting interests, possible impaired judgment of unknown effect, difficulty of proof, and danger to stockholders. In either case inadequacy of price is unfairness and condemns without further inquiry in an attempt to determine whether due to corruption or honest but mistaken judgment unconsciously swayed by adverse interest. There is no safety otherwise."

At the beginning of the suit Judge Hunt, in granting an injunction pending the litigation restraining the disposition by the Alice company of the 30,000 shares of the stock of the Anaconda company, held upon the showing then made that Ryan as managing director of the Anaconda company "must have had some specific, detailed knowledge of ore bodies in the Alice, their extent, character, and value, which would warrant the payment of \$1,300,000 for the property, is an irresistible inference. We all know that the science of mining has been so far advanced within the last fifteen years that it enables engineers to express clear and definite opinion of mine values. Mere chances have given way to highly reasonable expectations based upon exploitation, study of geological conditions, assays, mineralogy and improved commercial facilities for reducing ores;" and further held (and, as we think, very correctly) that upon principle contracts between corporations having a common director should be regarded very much as are contracts between individual directors and their corporations, and that while such contracts are not prohibited and are not *prima facie* void or fraudulent, they are voidable and that the burden rests upon those who seek to sustain them to show clearly and satisfactorily that they are entirely fair and free from wrong—citing with approval what is said upon the subject in II Thompson on Corporations, Secs. 1242 and 1243.

The trial court held that by the evidence given that burden was not sustained, with which conclusion we agree, not only because of the inadequacy of the consideration but because it appears in part from Ryan's own testimony that all of the knowledge respecting the Alice properties within the possession of the buying corporation of which he was managing director was not communicated to the stockholders of the Alice company, of which he was likewise a di-



rector and also its president, and whose directors it is manifest from the whole record he dominated.

From his testimony we extract as follows:

"The price was fixed by general conference,—in the matter of the Alice Company the price was fixed more or less arbitrarily. There was nothing in the value of the mines, there was nothing demonstrated that anybody could fix any value on. It was matter of trade between the representatives of both companies. Of course, when I closed out with Mr. Heinze I was on one side doing the best I could for the Amalgamated and Mr. Heinze was doing the best he could for his company. When we traded with Clark, Mr. Clark was looking after the interests of his company and I was looking after the interest of the Anaconda and the Amalgamated Company. The Alice Company appointed a committee to confer with a committee representing the other companies. I think the Board of Directors appointed the committee and I was president of the Board at the time. I don't remember who the members of the committee were. My associates upon the Board representing the Alice negotiations were Mr. Carson and Mr. Thornton. They were the two that I relied on more than anybody else in the Alice Company. They were not connected with the Anaconda or with any of the other Amalgamated companies, but they were directors of the Alice, both men of very good knowledge of the Butte Camp and its history, and as good a knowledge as anybody had of the Alice Company. Mr. Carson was manager of the Lexington mills, the adjoining property to the Alice, for years when it was in operation, and just before it closed, and probably had as intimate knowledge of that important district and Lexington districts as anybody who was then living. I don't recall who represented the Anaconda Company. There were committees representing the different companies that were in negotiation for the purchase on the part of the Anaconda Company and for the sale on the part of the other companies. I don't know that Mr. Thornton, Mr. Carson and myself agreed readily upon the price, but I don't recall any dispute. In reality the price was arbitrarily fixed. It had to be. It could not be otherwise. The price was not fixed by me. Neither the price on that or any of the other properties. I was very careful to see it was not. I realized that just such a question as this would be asked. I don't know that I would have so little common sense as to order on the part of the Alice Company prior to the sale of the Anaconda an investigation to be made by anybody to ascertain the then value of the Alice property. The Alice had no value except as to its mine. The whole matter of the value of the Alice mine was discussed pro and con at the time I took that option and as I say all the talent in our organization was criticizing me for taking that option. Nothing had developed after that time up to the time of the transfers of these properties to the Anaconda Company in the Alice mine or on the Alice mine property that was worthy of investigation. We all knew the development of the adjacent property in a way, and enough to guide us in our judgment as to the effect of that value on the Alice company. The committee that were looking after the

Alice end of the trade certainly satisfied themselves what they thought was a reasonable value for the property and made investigations accordingly I have no doubt. All of the committees representing all the companies did that; that being a part of the arrangements. . . . I produced the statement which you requested—complainants' exhibit 'A' October 7, 1913, showing the production of copper, silver and gold of the Badger State mine since the commencement of operations on that property to June 30, of this year. At the present time the lowest level in the Badger State mine is approximately two thousand feet in depth. The extraction of ore in commercial quantities began, I think, at about twelve hundred feet. That vein is probably a continuation of the Jessie vein (one of the veins that crossed the property of the Alice company). I think there was a lean zone in the North Butte property at about that depth, but the Jessie was worked and produced ore practically from the surface, not in the same high grade bodies that were encountered from about nine hundred down. I think the two thousand and twenty-two hundred feet levels in the North Butte—by common repute,—I have never seen them myself are not as good levels as above and below. I can tell you from my mine report that I have here the distances east and west of the working shaft of the Badger State that the developments have extended. On the two thousand foot levels the workings extend easterly seventy-four feet and westerly sixty-nine feet from the cross-cut. I cannot find any report of Professor Kemp and Mr. Keller and Mr. Klepetko bearing particularly on the Alice property. I am quite sure that they did not make a written report particularly on that property, because they were employed by the different companies in the Anaconda consolidation to value plants, to inspect workings, and to generally pass upon the value of operating properties, which of course was impossible in the case of the Alice, as there was no plant and the workings were not accessible on account of the mine being filled up with water, up to about the 700 foot level. So far as the Alice company is concerned, there was no written report from any engineer on the property preparatory to or anticipatory of the sale. Mr. Thornton and Mr. Carson both of whom are engineers with considerable experience in the valuation of mining properties, particularly in Butte, were directors of the Alice company, and conferred with me as president of the company and very largely determined the value of the property for the purposes of the trade. Professor Kemp did not make any report to the Alice company. Of that I am certain. The circular to the stockholders issued by the Directors was all the information the Directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection of the offer of the Anaconda company to buy the Alice property. I did not have specific information concerning the property from Mr. Buzo (for years Superintendent of the Alice company), but I had general information. Mr. Buzo did not talk enthusiastically about the property as I remember it, but he was very anxious to have the Alice property fall into the hands of some-



one who had money enough or could find money enough to open it up and develop it in the hope that something could be developed to make it a valuable property. So far as I was able to judge, he gave me whatever information he had concerning the property."

We find in the record no evidence that Ryan ever conveyed to any of the complaining minority stockholders of the Alice company any of the information concerning its property or its probable or possible value communicated to the Anaconda company by the experts referred to in the foregoing testimony. And certainly there is no such information contained in the circular letter to the stockholders of the Alice company, referred to by the witness as having been signed by him and its other directors, advising the acceptance of the proposition of the Anaconda company, which circular letter we insert:

"NEW YORK CITY, NEW YORK, April 27, 1910.

"To the Stockholders of the Alice Gold & Silver Mining Company:

"You are advised that a special meeting of the stockholders of the company has been called to meet at the principal office of the Company in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, 1910, at the hour of 10 o'clock A. M. The purpose of the meeting is to submit to the consideration of the stockholders, and to have them pass upon, a proposed contract of sale between the Company and the Anaconda Copper Mining Company of Montana. The proposition, if approved by the holders of the necessary amount of the capital stock of the Company, will result in the sale and transfer of all of the property and assets of the Company to the Anaconda Copper Mining Company, in consideration of the issuance and payment by the latter company of 30,000 shares of the full paid capital stock of said Company. In submitting this proposition to the stockholders and advising its acceptance, the management wishes to state that the Alice Gold & Silver Mining Company was incorporated under the laws of Utah on the 16th day of March, 1880, with a capital stock of \$10,000,000.00, divided into 400,000 shares, having a par value \$25.00 each all of which stock was issued in acquiring certain mining properties near Walkerville, in the County of Silver Bow, State of Montana. The mines of the Company were operated actively from 1880 until 1893, and afterwards for a short period during the years 1897 and 1898. The total dividends which were paid from March 15, 1881, to March 15, 1898, amounted to \$1,075,000.00. During the period of active operation silver was the chief product of the Company. During the year 1893, because of the market decline in the market price of silver and the lean values of the ores which were developed in the lower levels of the Company's mines, it became necessary to close down its property, and practically no operations have since been conducted by the Company and no revenues have been received except a comparatively small sum realized from the royalties paid by lessees working in certain portions of the older levels of the mines. As a result of closing down

the mines of the Company the same filled with water up to the 700 foot level, and the workings between that level and the 1500 level have been and now are inaccessible. A balance Sheet showing the condition of the Company on March 31, 1910, and a Profit and Loss Account, showing the result of such operations as have been conducted by the present management, are attached hereto and marked respectively Exhibits A and B. In 1908 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock of the Company. The market price of silver, taken in connection with the low grades of the ores exposed, has been such that the mines of the Company could not be worked at a profit, and in view of the depleted condition of the treasury of the Company the management has not felt justified in endeavoring to carry out any extensive system of prospecting or development work. Recently the stockholders of other companies, to wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company, and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company, for certain amounts of the capital stock of the Anaconda Copper Mining Company, and the last named Company, in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company. By the consolidation above referred to the Anaconda Copper Mining Company has acquired the most important mining ground in the Butte District, and it is believed that it will be enabled, through the adoption of general systems of drainage, ventilation and development, to prospect in an economical manner the undeveloped portion of the property thus acquired. This Company is the owner of comparatively large areas of mining property which lie contiguous to some of the property belonging to the Anaconda Copper Mining Company, and which it is believed are of sufficient value to justify prospecting and development, provided the same can be carried on by a company strong enough financially to (bear the) burden of so doing. In addition to the cost which the resumption of active mining operations would entail, you are advised that it would be necessary to construct and equip new mills or reduction works of modern design and suitable character to handle the ores of the Company economically, provided such ores were encountered in sufficient quantity to justify the continuance of mining operations. Such action would require the expenditure of large sums of money, at present unavailable. You are therefore advised that in the opinion of the management it would be to the best interests of this Company and its shareholders to accept the proposition of the Anaconda Copper Mining Company. You are, therefore, requested to sign the accompanying proxy and return it in the enclosed envelope whether you expect

to be present at the meeting or not, in order that the stock owned by you may be represented and voted at the special meeting of the stockholders. Very respectfully, John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, E. S. Ferry, Board of Directors."

There is in the foregoing letter not only none of the information derived by Ryan from the experts of the Anaconda and its associated companies respecting the actual probable or possible value of the properties of the Alice company, nor any intimation of any intention of the board of directors of the latter company to wind up its business and obtain its dissolution; and, as a matter of fact, as the evidence shows, no move to that end was made until about one year after the sale and conveyance of all of the property of the company.

The court below, having found that an adequate price had not been paid for the properties in question, for which reason the appellees had not sustained the burden resting upon them to show that the sale was a fair one, and having held that it could not be legally made in consideration of stock in the Anaconda company, based upon its interpretation of the decision of the Supreme Court in the case of *Mason v. Pewabic Mining Company*, 133 U. S. 50, entered an interlocutory decree to the effect that the entire property be offered at public sale by the master of the court, upon prescribed notice, and that if an amount in excess of the value of the stock given for it by the Anaconda Company—which the court fixed at \$1,500,000—was not bid for it, the sale should stand confirmed; and it having subsequently been shown to the court that at the offer of the property at public sale as provided in and by the interlocutory decree no bid was made, the court entered the final decree affirming the sale.

I am unable to see that the decision of the Supreme Court in *Mason v. Pewabic Mining Company* in any respect sustains such decree.

In that case a corporation of Michigan, with a capital stock of 20,000 shares of the par value of \$25.00 each, afterwards increased to 40,000 shares, had become dissolved by the expiration of its charter on April 4, 1883, notwithstanding which fact the directors, who were elected in March of that year, continued the ordinary business of the corporation, and, among other things, made an assessment of \$88,000 on the capital stock, which was paid. On the 28th of March of the following year, at a meeting called "for the election of directors and for other purposes," these resolutions were adopted, against the vote and the protests of the complainants to the suit who were minority stockholders of the old company:

"Resolved: That the board of directors be authorized to sell and dispose of the property of the company for a sum not less than \$50,000; that the president and secretary be authorized to execute all conveyances necessary to carry out the contract for the sale of the property of this company made by the board of directors, and that the board of directors be, and hereby are, authorized to close up the business of the company.

"Resolved, That it is the sense of this meeting of stockholders that the property shall be sold to a new corporation, organized under the laws of Michigan, on the basis of forty thousand shares, and that the stock of such new corporation shall be issued to and received by the stockholders of this company in payment for the same, stockholders to have the right to receive (an) equal number of shares in (the) new company, if they so elect, on surrendering certificates of this company, within thirty days after April 12, 1884, and in case a stockholder does not take stock of the new corporation he is to receive his pro rata share in money."

The vote in favor of the adoption of the resolutions was 27,919 shares, against 6,754 shares in the negative. A new corporation, called the Pewabic Copper Company was thereupon organized under the laws of the same state, also with a capital stock of 40,000 shares at \$25.00 each, which was taken up by the defendant corporations, who, with two others, were named as the first directors, being the same persons who controlled the old company. The third article of this association declared that no cash is actually paid on the capital stock—the cash value of real and personal property conveyed to the company contemporaneously with its organization being the sum of \$50,000. The bill prayed for an injunction and restraining order forbidding the defendants from carrying out the purpose of transferring the property of the Pewabic Mining Company to the new corporation, and for the appointment of a receiver to take charge of the effects of the old company, that they might be sold, the debts of the company paid, and the remainder of the proceeds distributed among its stockholders. Upon the issues made and proof taken the trial court decreed that the business of the Pewabic Mining Company be wound up and that all of its assets "be sold at public vendue for cash to the highest bidder: Provided, That if at such sale the bid for the aggregate of the property and assets should not be in excess of \$50,000 above the amount of the debts of the company existing at the time of the sale, then the arrangement for the sale of such property, made at the stockholders' meeting in Boston on the 26th day of March, 1884, as set up in defendants' answer, shall be carried out under the direction of the special master, hereinafter designated, and as provided by the resolution adopted by the stockholders at said meeting." The decree preceeded to refer the cause to a special master for these purposes and with these powers: That he should ascertain the assets, property, and debts of the company, and that after ascertaining and reporting the same to the court the master should proceed, upon giving the required notice, to sell the property at public sale to the highest bidder in one body, with a provision to the effect that if the highest bidder for such property at such sale should amount to more than \$50,000 over and above the indebtedness of the company, "then that the arrangement for the sale of said property, made at said meeting of the stockholders at Boston, must be set aside and held to be null and void, and the Pewabic Mining Company be enjoined perpetually from selling to the Pewabic Copper Company, and that company is enjoined from receiving its trans-

fer of the property." The decree further declared that the directors of the old company "are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4, 1883, and that an accounting by said defendant directors is hereby denied as to such expenditure made by them after the expiration of the charter."

This last provision of the decree in favor of the directors of the old company was reversed by the Supreme Court, while the other portions of the decree were by it affirmed—the court saying:

"With regard to the main question, the power of the directors and of the majority of the corporation to sell all of the assets and property of the Pewabic Mining Company to the new corporation under the existing circumstances of this case, we concur with the Circuit Court. It is earnestly argued that the majority of the stockholders—such a relatively large majority in interest—have a right to control in this matter, especially as the corporation exists for no other purpose but that of winding up its affairs, and that, therefore, the majority should control in determining what is for the interest of the whole, and as to the best manner of effecting this object. It is further said that in the present case the dissenting stockholders are not compelled to enter into a new corporation with a new set of corporators, but have their option, if they do not choose to do this, to receive the value of their stock in money. It seems to us that there are two insurmountable objections to this view of the subject. The first of these is that the estimate of the value of the property which is to be transferred to the new corporation and the new set of stockholders is an arbitrary estimate made by this majority, and without any power on the part of the dissenting stockholders to take part, or to exercise any influence, in making this estimate. They are therefore, reduced to the proposition that they must go into this new company, however much they may be convinced that it is not likely to be successful, or whatever other objections they may have to becoming members of that corporation, or they must receive for the property which they have in the old company a sum which is fixed by those who are buying them out. The injustice of this needs no comment. If this be established as a principle to govern the winding up of dissolving corporations, it places any unhappy minority, as regards the interest which they have in such corporation, under the absolute control of a majority, who may themselves, as in this case, constitute the new company, and become the purchasers of all the assets of the old company at their own valuation. The other objection is that there is no superior right in two or three men in the old company, who may hold a preponderance of the stock, to acquire an absolute control of the whole of it, in the way which may be to their interest, or which they may think to be for the interest of the whole. So far as any legal right is concerned, the minority of the stockholders has as much authority to say to the majority as the majority has to say to them, "We have formed a new company to conduct the business of this old corporation, and we have fixed the value of the shares of the



old corporation. We propose to take the whole of it and pay you for your shares at that valuation, unless you come into the new corporation, taking shares in it in payment of your shares in the old one." When the proposition is thus presented, in the light of an offer made by a very small minority to a very large majority who object to it, the injustice of the proposition is readily seen; yet we know of no reason or authority why those holding a majority of the stock can place a value upon it at which a dissenting minority must sell or do something else which they think is against their interest, more than a minority can do."

The court proceeded to liken the rights of the parties to that suit in regard to the assets of the dissolved corporation to those of a partnership on its dissolution, and concluded its opinion upon that point as follows:

"We do not say that there may not be circumstances presented to a court of chancery, which is winding up a dissolved corporation and distributing its assets, that will justify a decree ascertaining their value, or the value of certain parts of them, and making a distribution to partners or shareholders on that basis; but this is not the general rule by which the property in such cases is disposed of in the absence of an agreement."

In all this I see nothing to justify the decree appealed from. There the corporation had ceased to exist. Its former directors had become trustees, whose duty it was to reduce the property of the corporation with all reasonable diligence into cash, and after paying the legitimate indebtedness to distribute the proceeds remaining among the stockholders. Instead of doing so they organized a new corporation to take over the property of the old one and offered to award to the dissenting stockholders their proportionate shares of the stock of the new company, or to pay them for it on the basis of \$50,000 for the entire property. In that case the minority stockholders of the corporation that had ceased to exist asked that its property be sold and the court so decreed, but in doing so directed that in the event no bid in excess of \$50,000 should be received that the resolution that has been referred to should be carried out and payment made to the complainants on the basis of \$50,000 as the value of the company's property—the defendants by their answer having continued their offer to pay on that basis. That portion of the decree awarding the complainants the protection mentioned does not appear to have been appealed from by either party, and was not reviewed by the Supreme Court. While affirming the order directing the sale, as has been seen, that portion of the decree appealed from which denied to the complainants an accounting by the trustees of the dissolved corporation was reversed.

Here the complainants were minority stockholders of an existing corporation, not asking for, but protesting against, the sale of its property. I think the cases wholly unlike and am of the opinion that the judgment should be reversed and the case remanded to the court below with directions to enter a decree for the return to the Anaconda Copper Mining Company of the 30,000 shares of its

capital stock, together with any and all dividends that have been paid thereon, and annulling the sale and conveyance to it of the properties of the Alice Gold and Silver Mining Company, the appellants to recover costs of suit.

How a sale of all of the property of a private corporation, for an inadequate price and which is otherwise unfair and wholly illegal, made by its board of directors with the consent of a majority of the stockholders but in spite of the dissent of a minority of them, can be subsequently rendered legal by offering the property at public sale to see if at such sale it will bring more, I am unable to understand. The offer at public auction of property of the nature of that here involved, even if there be bidders, is, in my judgment, but little, if any, test of its real value. Many courts have refused to permit evidence of what property brought at a judicial sale at public auction to be given in proof of value, while others, although admitting it, refer to it as only slight evidence. (*Martinett v. Maczkevez*, 35 Atl. 662; *In re McAusland*, 235 Fed. 189, 190; *Rickards & Co. v. Bemis & Co.*, 78 S. W. 239; *Street Ry. Co. v. Walsh*, 94 S. W. 860.)

In the present case there was no bidder at all—thus, according to the decision of a majority of this court, there was rendered legal and valid the sale and conveyance of the entire property of an existing corporation, which sale and conveyance it was found and adjudged by the court below, and is found and adjudged by this court, were at the time they were made unfair and wholly illegal.

From that conclusion I respectfully dissent.

[Endorsed:] Dissenting Opinion. Filed Oct. 1, 1917. F. D. Monekton, Clerk. By Paul P. O'Brien, Deputy Clerk.

*Decree.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldberg, and Eugene Bascho, Co-Partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants.

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

*Decree U. S. Circuit Court of Appeals.*

Appeal from the District Court of the United States for the District of Montana.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Montana, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged and decreed by this Court that the appellees recover against the appellants for their costs herein expended and have execution therefor.

[Endorsed:] Decree. Filed and Entered October 1, 1917, F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.



United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

GEDDES et al., Appellants,

vs.

ANACONDA COPPER MINING CO., a Corporation, Appellees.

*Order Staying Issuance of Mandate Under Rule 32.*

Good cause appearing therefor,

It is hereby ordered, adjudged and decreed that plaintiffs in error may have until the 20th day of November, 1917, within which to prepare, serve and file herein their petition for rehearing.

And it is further ordered, adjudged and decreed that the mandate of the above entitled court in this matter be and the same is hereby stayed until the 20th day of November, 1917.

Dated: October 30, 1917.

WM. H. HUNT,

*United States Circuit Judge.*

[Endorsed:] Order Staying Issuance of Mandate Under Rule 32. Filed October 30, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

*Petition for Appeal.*

To the United States Circuit Court of Appeals for the Ninth Circuit, and to the Honorable Justices thereof:

The above named appellants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos;

and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, and Leopold Freund and Alice Frey, feeling aggrieved by the decree rendered by the above entitled court in the above entitled matter on the second day of October, A. D. 1917, by hereby, jointly and severally, appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and they pray that their appeal be allowed and that Citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

T. J. WALSH,

C. B. NOLAN,

*Solicitors and Counsel for Appellants.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, Appellees.

*Assignment of Errors.*

And now come Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, appellants, by Thomas J. Walsh, Esq., and C. B. Nolan, Esq., their solicitors and counsel, and make and file this their assignment of error.

I.

The Circuit Court of Appeals of the United States for the Ninth Circuit erred in holding that though the acquisition of the property

of the Alice Gold and Silver Mining Company by the Anaconda Copper Mining Company was in violation of the Sherman Anti-trust Act, the complainants could not avail themselves in this suit of such fact.

## II.

Said Court erred in holding that the complainants could not be heard to assert or contend that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company referred to in the bill was made in violation of the Sherman anti-trust act.

## III.

Said Court erred in holding in effect that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company and the deed evidencing the same referred to in the bill were not made in violation of the Sherman anti-trust act.

## IV.

Said Court erred in holding that a majority of the stockholders of the Alice Gold and Silver Mining Company as against the dissenting complainants, being stockholders, through its board of directors or otherwise, or that any number of stockholders as against any dissenting stockholders, might make a valid transfer of all the property of that company.

## V.

Said Court erred in holding that the transfer of all the property of the Alice Gold and Silver Mining Company, despite the protest or dissent or without the concurrence of complainants, to the Anaconda Copper Mining Company or to any transferee is authorized as to them by the laws of the State of Utah.

## VI.

Said Court erred in holding that the Utah statute of 1905 referred to in the opinion herein by Ross, Circuit Judge, authorized the board of directors of the Alice Gold and Silver Mining Company with the consent of the majority of the stockholders to sell and dispose of all the property of that corporation, as against dissenting stockholders.

## VII.

Said Court erred in holding that the said statute, as against the complainants being stockholders of the Alice Gold and Silver Mining Company, a corporation of the said state of Utah in existence prior to the enactment of said statute, is not in contravention of the

constitution of the United States in the provision thereof which forbids any state to pass any law impairing the obligation of contracts and it was error not to hold that such statute is, as against the complainants, violative of such provision of the constitution of the United States.

## VIII.

Said Court erred in holding that it was not ruled in the Supreme Court of Utah in the case of *Garey v. St. Joe Mining Company* (32 Utah 497, 91 Pac. 369) that if such statute in terms authorizes such transfer it is violative of the said provision of the constitution of the United States, and said Court erred in not holding that it was decided in said case that the statute, if it authorizes such transfer, is so violative of such provision.

## IX.

Said Court erred in not finding that the Alice Gold and Silver Mining Company had no power or authority to take, receive or hold stock of the Anaconda Copper Mining Company or any other corporation, or to receive or hold the stock of said last mentioned company transferred to it as recited in the bill of complaint.

## X.

Said Court erred in not finding that there was no purpose entertained by the Alice Gold and Silver Mining Company at the time it acquired the stock of the Anaconda Copper Mining Company as recited in the bill, whatever purpose may have been in the minds of some of its directors or stockholders, to apportion such stock among its stockholders, or the cash value of the share of any stockholder preferring cash, or to wind up the business or disincorporate the company.

## XI.

Said Court erred (in view of its finding that the price paid by the Anaconda Copper Mining Company for the property of the Alice Gold and Silver Mining Company was inadequate, that information in the possession of the purchaser affecting the value of the property was not disclosed to the stockholders of the selling company, and that the burden resting upon the first above mentioned company and the defendants to show that an adequate price had been paid and that the sale was a fair one had not been met) in not holding that the sale and transfer and the deed evidencing the same referred to in the bill each is void.

## XII.

Said Court erred in not holding that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda

Copper Mining Company and the deed evidencing the same, attacked by the bill, each is void:

(1) Because the same was made in violation of the Sherman Anti-trust Act.

(2) Because the Alice Gold and Silver Mining Company had no power to dispose of all of its property as against the complainants or any of them without their consent.

(3) Because of the relations subsisting between those controlling the affairs of the Alice Gold and Silver Mining Company and the affairs of the Anaconda Copper Mining Company, they being substantially the same persons, a valid purchase could not be made by the last named company except on full disclosure and the payment of an adequate price, and there was not full disclosure, neither was the price paid adequate, and because the burden was upon the said last named company to establish in this suit full disclosure and the payment of an adequate price, and neither fact was established by the evidence.

(4) Because the transfer and deed assailed by the bill were each made in violation of the Sherman anti-trust act.

### XIII.

Said Court erred in not entering, or directing to be entered, a decree annulling the deed referred to in the bill of complaint transferring the property of the Alice Gold and Silver Mining Company upon the return by, and directing the return by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company of the stock received in payment for such property together with the accrued dividends thereon.

### XIV.

Said Court erred in holding that the decree entered in the trial court was justified or required by the decision of the Supreme Court of the United States in the case of *Mason v. Pawabic Mining Company*, 133 U. S. 50.

### XV.

Said Court erred in affirming the decree of the United States District Court for the District of Montana, which decree was erroneous for the reasons assigned in the Assignment of Errors on the appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, which assignment is hereby, by this reference, made a part of this assignment on appeal to the Supreme Court of the United States.

Wherefore, the said appellants, Peter Golden, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascio, Co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice

Frey, pray that the judgment of said United States Circuit Court of Appeals for the Ninth Circuit be reversed and that it be ordered that the said deed be annulled upon the return to the Anaconda Copper Mining Company of the stock received by the Alice Gold and Silver Mining Company as the consideration for the same with the dividends paid to it thereon.

T. J. WALSH,  
C. B. NOLAN,  
*Solicitors for Appellants.*

f. J. WALSH,  
*Counsel for Appellants.*

[Endorsed:] Petition for Appeal to Supreme Court U. S. and Assignment of Errors. Filed November 19, 1917, F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831. In Equity.

PETER GEORGE, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isidor Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Baecho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Perry, Appellees.

*Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond.*

On motion of Thomas J. Walsh, Esq., and C. B. Nolan, Esq., solicitors and counsel for appellants, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed, and entered herein, be, and the same is hereby, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is Further Ordered, That the bond on appeal be fixed at the sum of \$1000.

Dated, November 19, 1917.

WM. W. MORROW,  
*Judge.*

[Endorsed:] Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond. Filed Nov. 19, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY C. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

*Bond on Appeal.*

Know all men by these presents: That we, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; and Leopold Freund and Alice Frey, as principals, and Massachusetts Bonding and Insurance Company, as Surety, are held and firmly bound unto the Anaconda Copper Mining Company, a Corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in the sum of One Thousand Dollars (\$1,000.00), lawful money of the United States, to be paid to them and their representatives, executors and administrators and successors, to which payment well and truly to be made, we bind ourselves, each of us, jointly and severally, and each of our heirs, executors and administrators by these presents;

Sealed with our seals and dated this 12th day of November, 1917.

Whereas, the above named appellants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, have taken an appeal to the Supreme Court of the United States to reverse the decree of the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled case.

Now, therefore, The condition of this obligation is such that if the above named appellants shall prosecute their said appeal to effect, and answer all costs if they fail to make their appeal good,

then this obligation shall be void; otherwise to remain in full force and effect.

PETER GEDDES.	[SEAL.]
JOSEPH R. WALKER.	[SEAL.]
JOSEPH S. BAER.	[SEAL.]
HENRY S. EVERETT.	[SEAL.]
MARGARET ANN MEEHAN.	[SEAL.]
EUGENE BLUM.	[SEAL.]
ISADOR BAER.	[SEAL.]
ISAAC BLUM.	[SEAL.]
EDWARD BLUM.	[SEAL.]
ALPHONS DREYFOOS.	[SEAL.]
DAVID C. GOLDENBERG.	[SEAL.]
EUGENE BASCHO.	[SEAL.]
LEOPOLD FREUND.	[SEAL.]
ALICE FREY.	[SEAL.]

By C. B. NOLAN AND  
T. J. WALSH,

*Their Solicitors and Counsel.*

MASSACHUSETTS BONDING AND  
INSURANCE COMPANY,

By SOL POZNANSKI, *Agent.*

Attest:

A. J. HORSKY,

*Attorney in Fact.*

The foregoing bond and surety approved this 19th day of November, 1917.

WM. W. MORROW,

*Judge.*

[Endorsed]: Bond on Appeal. Filed Nov. 19, 1917. F. D. Monckton, Clerk.



## United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

*Præcipe for Certified Transcript of Record on Appeal to the Supreme Court of the United States.*

To the Clerk of the said Court:

SIR: Please make and furnish me with a certified transcript of the record, (including the proceedings had in said Circuit Court of Appeals), for use on appeal to the Supreme Court of the United States in the above entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of record on which the cause was heard in said Circuit Court of Appeals, to which will be added a typewritten copy of the following-entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:
2. Order of Submission, entered March 12, 1917;
3. Order Directing Filing of Opinion and Dissenting Opinion, etc., entered Oct. 1, 1917;
4. Opinion and Dissenting Opinion, filed Oct. 1, 1917;
5. Decree, filed and entered Oct. 1, 1917;
6. Order Staying Issuance of Mandate, etc., filed Oct. 30, 1917;
7. Petition for and Order Allowing Appeal and fixing amount of bond;
8. Assignment of Errors;
9. Bond on appeal;
10. Order Directing Transmission of Original Exhibits to Supreme Court, U. S.
11. Original Exhibits;
12. Præcipe for Transcript of Record;
13. Certificate of Clerk, U. S. Circuit Court of Appeals to said Transcript.
14. Citation on Appeal.

T. J. WALSH AND  
C. B. NOLAN,  
*Counsel for the Appellants.*

Service of a copy of the within præcipe is admitted this 24th day of November, A. D. 1917.

L. O. EVANS,  
W. B. ROGERS AND  
D. GAY STIVERS,  
*Counsel for the Appellees.*

[Endorsed:] Præcipe. Filed Dec. 4, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2831.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

*Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.*

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit do hereby certify the foregoing one thousand and thirty-eight (1038) pages, numbered from and including 1 to and including 1038, to be a full, true and correct copy of the record made pursuant to the præcipe filed by counsel for the appellants on the 4th day of December, A. D. 1917, under Rule 8 of the Rules of the Supreme Court of the United States, in the above entitled cause including the Assignment of Errors on appeal to the said Supreme Court, and of all proceedings had and of all papers, including the Opinion and Dissenting Opinion filed in said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same, together with the accompanying original exhibits, viz: Plaintiffs' No. 1, Weed Map, No. 1, Corry Map; No. 2, Corry Map; Complainants' No. 1, Goodale Map; Complainants' R. S. T. and U.; Defendants' No. 1, Corry Map; and Defendants' No. 2, Gillie or Buzzo, Blue Print, constitute the Transcript of Record upon appeal to the Supreme Court of the United States in the above entitled cause, as made and certified pursuant to the said præcipe.

I further certify that the cost of the above-mentioned Transcript

of Record amounts to the sum of Thirty (30.00) Dollars, and that the cost thereof has been paid by counsel for the Appellants.

Attest my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, this 7th day of December, A. D. 1917.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*,  
By PAUL P. O'BRIEN, *Deputy Clerk*.

United States Circuit Court of Appeals for the Ninth Circuit.

Citation on Appeal.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, Co-partners Doing Business under the Firm Name and Style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation; ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson, and E. S. Ferry, Appellees.

UNITED STATES OF AMERICA, ss:

To Anaconda Copper Mining Company, a Corporation, Alice Gold and Silver Mining Company, a Corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;  
Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington in the District of Columbia on the 18th day of January, A. D. 1918, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit from a final decree filed and entered on the 2nd day of October, 1917, in said Court in that certain suit being in Equity No. 2831, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey are plaintiffs and you are defendants and appellants, to show cause, if any there be, why the decree rendered against the said appellants as in said order allowing appeal mentioned should not

be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow, United States Circuit Judge of the United States Circuit Court of Appeals for the Ninth Circuit this 19th day of November, 1917, and of the Independence of the United States.

WM. W. MORROW,  
*Circuit Judge of the United States Circuit Court  
of Appeals for the Ninth Circuit.*

Service of a copy of the within Citation on Appeal is admitted this 24th day of November, A. D. 1917.

L. O. EVANS,  
W. B. RODGERS,  
D. GAY STIVERS,  
*Counsel for the Appellees.*

[Endorsed:] Docketed. No. 28-1. In Equity. United States Circuit Court of Appeals for the Ninth Circuit. Peter Geddes, et al., Appellants, vs. Anaconda Copper Mining Company, a Corporation, et al., Appellees. Citation on Appeal. Filed, November —th, 1917. Filed Dec. 4, 1917. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Endorsed on cover: File No. 26,287. U. S. Circuit Court Appeals, 9th Circuit. Term No. 820. Peter Geddes, Joseph R. Walker, Joseph S. Baer, et al., appellants, vs. Anaconda Copper Mining Company, et al. Filed January 19th, 1918. File No. 26,287.